

EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION, CINCINNATI

EVERETT W. WHISMAN, et al., :  
Plaintiffs :  
-v- : Case No. C-1-02-406  
: (Judge Beckwith)  
: (Magistrate Sherman)  
ZF BATAVIA, LLC, et al., :  
Defendants :

- 0 -

The deposition of KARL S. KEHR, taken before Susan K. Lee, CVR-CM, Court Reporter and Notary Public in and for the State of Ohio, at the law offices of David M. Cook, LLC, 22 West Ninth Street, Cincinnati, Ohio, on the 18th day of March, 2003, beginning at the hour of 10:15 a.m. and ending at 6:00 p.m. of the same date.

- 0 -

RIVERSIDE REPORTING  
Certified Court Reporters  
P.O. Box 949  
Covington, Kentucky 41012  
KY(859)291-6110 OH(513)574-7017

 **COPY**

EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 2

2

APPEARANCES:

FOR THE PLAINTIFFS: STEPHEN A. SIMON, Esq.  
Attorney at Law  
22 West Ninth Street  
Cincinnati, Ohio 45202

FOR THE DEFENDANTS: JOHN J. HUNTER, JR., Esq.  
Attorney at Law  
One Canton Square  
1700 Canton Avenue  
Toledo, Ohio 43264

JEFFREY L. VANWAY, Esq.  
Attorney at Law  
312 Walnut Street  
Suite 3200  
Cincinnati, Ohio 45202-4074

ALSO PRESENT: MR. E. DONALD WILLIAMS, II  
MR. GARY VORIES  
MR. E. WAYNE WHISMAN  
MR. MICHAEL WARDEN  
MR. HERBERT HUEBNER  
- 0 -

## STIPULATIONS:

It is stipulated by and between counsel for the respective parties that the deposition of KARL S. KEHR, a witness herein, may be taken at this time pursuant to the Federal Rules of Civil Procedure and Notice; that the deposition may be taken via Stenomask by the Notary Public/Court Reporter, and transcribed by her out of the presence of witness; that the deposition was submitted to counsel for the witness for reading and signature.

- 0 -

PAGE 3

3

## INDEX OF EXAMINATION:

By Mr. Simon.....	4
INDEX OF EXHIBITS:	
1 9/30/99 letter to Mr. Kehr from Mr. Adams.....	17
2 document, "ZF Batavia L.L.C. offers you".....	21
3 11/30/99 letter to Mr. Whisman from Mr. Saleh.....	30
4 documents related to May 27, 1999 meeting.....	66
5 e-mails.....	149
6 "Ford Salaried Employees at ZF Batavia".....	156
7 "Transition Plan, Ford Salaried Employees at ZF Batavia".....	156
8 "Ford Salaried Employees at ZF Batavia".....	156
9 2000 AIP award document.....	172
10 3/28/02 letter to All Exempt Salaried Employees from Mr. Sennish.....	192
11 12/1/98 memo to Batavia Plant Salaried Employees.....	194
12 e-mails.....	195
13 e-mails.....	209
14 e-mails.....	209
15 e-mails.....	220
16 notice regarding Foreign Trade Zone regulations.....	222

PAGE 4

4

1 KARL S. KEHR, called as a witness, being first duly  
2 sworn, testified as follows:

3 MR. SIMON: Mr. Kehr, my name is Steve  
4 Simon. I'm an attorney for the plaintiffs in  
5 this lawsuit against ZF Batavia and Ford Motor  
6 Company, and what we're doing now is taking  
7 your deposition. Have you ever had your  
8 deposition taken before?

9 THE WITNESS: Yes, I have.

10 MR. SIMON: Well, let's start there.

11 BY MR. SIMON:

12 Q How many times have you had your  
13 deposition taken?

14 A Do you mean pieces of separate  
15 litigation or multiple depositions around the same  
16 litigation?

17 Q I'll take total number of depositions.

18 A Probably hundreds.

19 Q Hundreds? All right. Was one of the  
20 -- I think you indicated that you've had your  
21 deposition taken once in this same lawsuit?

22 A Well, there was a -- Ford Motor Company  
23 sold Ford Aerospace and it went into arbitration  
24 proceedings and it lasted six months and dealt with  
25 \$130 million disputed transaction price. So over a

PAGE 5

5

1 six-month period there was a fair amount of discussions  
2 and court reporting like you've got here.

3 Q And you had your deposition taken for  
4 that?

5 A Well, I'm not sure if they were  
6 depositions, but it was an atmosphere like this.

7 Q Okay.

8 A Questions are asked, minutes are  
9 recorded.

10 Q You gave sworn testimony?

11 A Yes.

12 Q Okay. And how long ago was this?

13 A It would have been 1990.

14 Q Okay. Any other litigation of any kind  
15 that you've given depositions?

16 A Yeah. My neighbor a couple of years  
17 ago wasn't pleased with my garage that I was building,  
18 so that turned into a little bit of a litigation and  
19 required some depositions.

20 Q Where was that litigation? I mean --  
21 when I say where, I mean what court?

22 A Clermont County.

23 Q Okay. What year when you gave your  
24 deposition in that case?

25 A That would have been within the last

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 6

6

1 two years. About two years ago.

2 Q Is that matter still pending?

3 A No.

4 Q Now, you said you had your deposition  
5 taken hundreds of times?

6 A It was related to the sale price of a  
7 company and there was business people from Loral and  
8 Ford business people and we asked questions and I  
9 responded to the questions and it was documented like  
10 this. I don't know if legally it's called a deposition  
11 or if it's whatever, but it was fundamentally like  
12 this, asking questions.

13 Q And it was -- and this is separate from  
14 the Ford Motor/Ford Aerospace thing?

15 A It was all related to that.

16 Q Other than that matter and your  
17 incident with the garage, have you ever given any sworn  
18 testimony in any other legal matter?

19 A Not that I remember.

20 Q Okay. And just because I'm still  
21 curious, the Ford Motor/Ford Aerospace matter, are you  
22 saying that on 100 different occasions you gave some  
23 sort of sworn testimony or you attended hearings where  
24 other people gave?

25 A No. I was the finance manager so I

PAGE 7

7

1 knew the bookkeeping associated with the transaction,  
2 so over a six-month period I went back and forth from  
3 California to New York City where these discussions  
4 were held and it was a six-month process with, you  
5 know, literally 50 to 100 government contracts that  
6 they asked questions about the bookkeeping for those  
7 and whatnot.

8 MR. SIMON: Okay. All right. Well, it  
9 sounds like then you're familiar with perhaps  
10 the ground rules of the deposition. I just  
11 want to go over those with you. You're going  
12 to be answering questions under oath. The  
13 court reporter is going to be taking down your  
14 answers. And because she's taking down your  
15 answers, it's important that you give verbal  
16 responses. If you give a little grunt or a  
17 shake of the head, it's hard for that to be  
18 recorded, so where you can, if you can give a  
19 yes or no answer, I'd appreciate that. Can you  
20 do that?

21 THE WITNESS: Yes, I can.

22 MR. SIMON: All right. Where possible,  
23 this is hard to do over the course of a  
24 deposition sometimes, but I'll wait for you to  
25 finish your answer if you do the same and wait

PAGE 8

8

1 for me to finish my question. That way we  
2 don't talk over each other and it makes it  
3 easier for the court reporter; sound fair?

4 THE WITNESS: That's okay.

5 MR. SIMON: This one is very important.  
6 If you don't understand my question on any  
7 level for whatever reason, either you didn't  
8 hear it, you don't understand what I said,  
9 please ask me to rephrase the question or just  
10 re-ask the question because if you don't,  
11 somebody reading the transcript is going to  
12 assume when you answered the question that you  
13 understood the question. Will you do that?

14 THE WITNESS: Yes, that's fair enough.

15 MR. SIMON: All right.

16 BY MR. SIMON:

17 Q Do you know in that Ford Motor/Ford  
18 Aerospace matter if transcripts were retained of your  
19 deposition testimony?

20 A I wouldn't know.

21 Q And I don't know if I've yet to do  
22 this. Just state your full name for the record.

23 A Karl Stephen Kehr.

24 Q Okay. And you're currently employed by  
25 ZF Batavia?

PAGE 9

9

1 A That's correct.

2 Q All right. And what is your position?

3 A I'm the Chief Financial Officer --

4 Q All right.

5 A -- of ZF Batavia and ZFTT.

6 Q What was that second one?

7 A ZF Transmissions Technologies. There's  
8 two companies affiliated with the Ford and ZF joint  
9 venture.

10 Q The first is ZF Batavia, LLC, correct?

11 A Yeah. It's on my business card.

12 Q All right. And, now, the joint venture  
13 was created in 1999 between Ford Motor Company and ZF  
14 Friedrichshafen?

15 A Yeah, they're the parent companies,  
16 Ford and ZFAG.

17 Q And we'll provide a spelling for the  
18 court reporter of ZF Friedrichshafen. But so I  
19 understand, even though you're CFO for two different  
20 companies, I probably throughout the deposition will  
21 refer to ZF Batavia, and you understand when I refer to  
22 ZF Batavia, I'm referring to ZF Batavia, LLC, right?

23 A Okay. And not ZFTT at all or --

24 Q We may refer to ZFTT. If I refer to  
25 ZFTT, I'll call it ZFTT.

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 10

10

1 A So you'll differentiate the two?

2 Q I will. I will. Now, when was -- ZF

3 Batavia, LLC was created through a joint venture

4 between Ford Motor Company and ZF, right?

5 A Yes.

6 Q All right. When was ZFTT created?

7 A I believe that was April of 2001, I

8 believe.

9 Q Okay. Are your job duties for ZF

10 Batavia and ZFTT the same?

11 A Yes.

12 Q And just generally -- we'll talk in

13 more detail -- what are your job duties?

14 A They're specified in the joint venture

15 agreements, but I'm financially responsible fiduciary

16 for the assets of the company in terms of cash

17 management. As an officer of the company, I do report

18 to the board and do attend the board meetings and

19 report out, borrow money, otherwise secure financing as

20 required, approvals for certain thresholds of

21 investment or whatnot. Typical CFO kind of functions.

22 Q All right. And you previously were a

23 Ford employee?

24 A That's correct.

25 Q When did you first start at Ford?

PAGE 11

11

1 A It would have been April of 1985.

2 Q Just take me through, then, your job

3 history at Ford, what position you started at and what

4 your position was before you came to ZF Batavia.

5 A I started as a financial analyst on the

6 F18 program in Newport Beach, California. It's part of

7 Ford Aerospace. I worked out there for a couple of

8 years and then I was promoted to a finance supervisor,

9 1987, and came back to the Renaissance Center in

10 Detroit. I spent a year there, then we moved the

11 corporate office back to southern California.

12 Q Let me stop you right there. When did

13 you go back to Detroit?

14 A 1987.

15 Q Okay. And when you went to Detroit,

16 what was your capacity with the company?

17 A I was the finance supervisor on

18 corporate staff for Ford Aerospace.

19 Q Okay. So you changed locations, but

20 your job was the same?

21 A No. I was promoted when I went back in

22 1987.

23 Q I got you. All right. I interrupted

24 you. Then from there where do we go?

25 A Okay. Then in 1988 the corporate

PAGE 12

12

1 office was moved to southern California.

2 Q The corporate office of Ford Aerospace?

3 A That's correct.

4 Q Okay.

5 A So I moved back to southern California.

6 And between 1988 and 1990 I was promoted to a manager

7 position on corporate staff and the back end of that

8 two-year period we sold Ford Aerospace. Then I took an

9 offer from Ford Motor Company in 1990, as did my wife,

10 to move to Michigan and work for the parent company.

11 Q And what position did you take at that

12 point?

13 A I was a -- it was an MR position

14 working in the facilities and tooling approval area for

15 Ford's North American Automotive Operations.

16 Q What does MR mean?

17 A Management Role.

18 Q How long did you hold that position?

19 A About a year, I guess. About a year.

20 Q All right.

21 A Then I was promoted to what they called

22 a supplemental compensation role probably in around

23 about 1992 and I took a job as the finance manager for

24 engineering expenses for North American Automotive

25 Operations.

PAGE 13

13

1 Q That was in 1991 that you started that

2 position?

3 A Well, it was probably more like '92 or

4 '93.

5 Q Okay. And did you hold any other

6 positions before you went to ZF Batavia?

7 A Oh, yeah. So I did that one probably

8 for about a year, in terms of the engineering analysis

9 position. Then I went on a special assignment for nine

10 months working on Ford's worldwide transfer price

11 policy. That was a special assignment about nine

12 months. And then on the back side of that I was asked

13 to go down and help Ford Motor Company in South America

14 dissolve the joint venture between Ford and VW in

15 Brazil and Argentina. I spent about 15 months

16 traveling back and forth dissolving that joint venture.

17 And that would have been up to about '95, I guess.

18 Q Okay.

19 A Then when I came back from that

20 assignment, I was sent over to power train operations

21 engine engineering group as a finance manager.

22 Q Where were you located at that point?

23 A That would have been in Dearborn,

24 Michigan.

25 Q Okay.

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 14

14

1 A Then from there I probably spent 15  
2 months on that job, then I was sent out to Ford's  
3 automatic transmission operations group in Livonia as  
4 the finance manager for new product. And that should  
5 get me up to about the end of 1997.  
6 Q Okay.  
7 A I probably spent about a year there and  
8 then I was off to world headquarters where I was  
9 working in the mergers and acquisitions group. I was  
10 on that job about six months, early part of '98. Did a  
11 trip to Bangkok and a few other transactions and then I  
12 went and first met ZF in Germany in May or June of '98.  
13 The purpose of those discussions were to determine if  
14 there was a -- a joint venture or some business  
15 proposition that could be reasonably put together  
16 between ZF and Ford.  
17 Q And this was 1998?  
18 A Yeah, the summer of '98.  
19 Q Who was with you on that trip? I'm  
20 sure a lot of people.  
21 A Oh, yeah. From where? From Ford or --  
22 Q From Ford.  
23 A It would have been myself, Stan Meyer,  
24 Angelo Guido. I think Gordon Willis participated in  
25 some of the discussions.

PAGE 16

16

1 off-the-record conversation about confidential  
2 matters concerning Ford or ZF or both companies  
3 that we agreed that instead of the lawyers for  
4 the defendants objecting or requesting that the  
5 transcript -- that we go under seal during the  
6 deposition, instead the defendants' counsel  
7 will have an opportunity to review the  
8 deposition after the transcript is completed  
9 and identify those pages that should be put  
10 under seal. Is that our agreement, gentlemen?  
11 MR. VANWAY: Yes.  
12 MR. HUNTER: Yes.  
13 MR. SIMON: Okay. All right.  
14 BY MR. SIMON:  
15 Q I'm slightly out of order here, Mr.  
16 Kehr. What is your education? What's your background  
17 before you got to Ford?  
18 A I graduated from the University of  
19 Delaware with a major in economics and a minor in  
20 business administration and that would have been in  
21 December of 1981. Then I moved to southern California  
22 and got a job briefly with ADP in their pension  
23 department. That was only about four months. And then  
24 I got a job with Rockwell International and I began my  
25 MBA program at night school and graduated from what is

PAGE 15

15

1 Q Where did you actually meet with the ZF  
2 people?  
3 A It was at the Jagerhof, which is in  
4 Passau, Germany.  
5 Q For lack of a better word, who was in  
6 charge in terms of the Ford delegation with this  
7 meeting with ZF?  
8 A I'm not sure if there was anybody  
9 really in charge. We had our roles. It was a team. I  
10 was the mergers and acquisitions, finance person. Stan  
11 Meyer was the -- at the time he was automatic  
12 transmission operations business planning manager, so  
13 he was, I guess you'd say, operational sort of guy.  
14 And then Angelo was the -- I'm not sure -- I don't  
15 think he had a title of chief engineer, but he was a  
16 transmission engineer, a senior transmission engineer  
17 at ATO.  
18 Q Did you say what Mr. Willis -- what his  
19 role was?  
20 A He was chief engineer for Ford's  
21 transmission operations.  
22 MR. SIMON: All right. I want to go  
23 off the record for just a second.  
24 (OFF THE RECORD)  
25 MR. SIMON: The lawyers have had an

PAGE 17

17

1 now Chapman University in Orange, California, with an  
2 MBA in 19 -- it would have been 1985 when I graduated.  
3 Q Do you have roots in southern  
4 California or Delaware or Cincinnati?  
5 A No. I grew up outside of Philadelphia.  
6 Q All right. So you don't have a -- you  
7 don't have a scientific background?  
8 A I started in chemical engineering at  
9 University of Delaware, but that's the limit of my  
10 scientific endeavors.  
11 Q All right. Let's see. Okay. So then  
12 you went from Ford to ZF Batavia in '99, right?  
13 A That's correct.  
14 Q And do you have an employment agreement  
15 with ZF Batavia?  
16 A I have an employment agreement with the  
17 -- I'm not sure if it's ZF Batavia or the board of  
18 directors. I believe I report to the board of  
19 directors and there is a compensation committee of the  
20 board that approves my contract.  
21 Q Okay. We'll get our first exhibit  
22 today. We'll make this Exhibit 1. There you go, sir.  
23 I've got one for you, Mr. Hunter. Everybody is taken  
24 care of.  
25 MR. HUNTER: I'm sorry, Steve. You

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 18

18

1 called that 1, correct?  
 2 MR. SIMON: I called it 1.  
 3 BY MR. SIMON:  
 4 Q Mr. Kehr, I see you're reviewing  
 5 Exhibit 1. Have you seen this document before?  
 6 A I believe so.  
 7 Q Okay. It appears to be a -- well, it  
 8 has D. Adams signature at the bottom and it's addressed  
 9 to Mr. Kehr. Is D. Adams Dave Adams?  
 10 A Yes.  
 11 Q And he's currently the president of ZF  
 12 Batavia?  
 13 A President and CEO.  
 14 Q Okay. And I see it's dated September,  
 15 30th, 1999. And would you agree that it sets out  
 16 various terms of your compensation as CFO for ZF  
 17 Batavia?  
 18 A Yes.  
 19 Q All right. When you were referring to  
 20 your agreement with either ZF Batavia or I think you  
 21 went on to say agreement with the board or directors,  
 22 were you referring to what is Exhibit 1?  
 23 A Exhibit 1 is the offer letter, my  
 24 particular offer letter from ZF Batavia, stipulating  
 25 the terms of my employment for '99.

PAGE 19

19

1 Q Well, it has an accept and decline at  
 2 the bottom; do you see that?  
 3 A Mm-hmm.  
 4 Q I take it you checked off the box  
 5 accept at some point?  
 6 A I believe so.  
 7 Q Okay. When you checked off accept, did  
 8 you believe that you had an agreement with ZF Batavia  
 9 regarding your compensation at ZF Batavia?  
 10 A Subsequent to these documents there  
 11 were contracts prepared for the officers of Batavia  
 12 that were fundamentally not opposed to what is in this  
 13 letter, but there were adjustments made and discussions  
 14 took place around those contracts and I can't remember  
 15 when that contract was actually signed. So I would say  
 16 that this was -- yes, valid in the 1999 period and then  
 17 subsequent to this there are three-year management  
 18 contracts for all of the officers.  
 19 Q So you signed supplemental agreements  
 20 in 2000, 2001 and 2002?  
 21 A No. They're three-year contracts.  
 22 Q Oh, three-year contracts.  
 23 A I believe I signed one -- I don't know  
 24 when I actually signed the first one, but they're  
 25 three-year contracts, so it would have been effective,

PAGE 20

20

1 yeah, January, '99 through January of 2002 and then  
 2 it's subsequently been renewed.  
 3 Q So you're saying that this document,  
 4 Exhibit 1 -- does it take you through January of 2002?  
 5 A No.  
 6 Q There's a different document that  
 7 you're referring to that sets out your terms and  
 8 conditions of employment from '99 to 2002?  
 9 A That's correct.  
 10 Q Okay. Do you know when you --and I  
 11 assume you have a copy of that agreement?  
 12 A Yes, I do.  
 13 Q Do you know when you signed that  
 14 agreement?  
 15 A I don't remember off the top of my  
 16 head.  
 17 Q Okay.  
 18 A It could have been late '99, early  
 19 2000. And I re-signed for the extension it would have  
 20 been probably in late 2001.  
 21 Q So Exhibit 1 you considered to be an  
 22 agreement between you and ZF Batavia regarding what  
 23 your pay would be through December 31st, 1999?  
 24 A I would say yeah, compensation valid  
 25 for the period of 1999, yes.

PAGE 21

21

1 Q Okay.  
 2 A The reason I make the distinction is  
 3 some of the bonus payments for '99 are actually made in  
 4 the beginning of 2002.  
 5 MR. SIMON: All right. I'll hand you  
 6 Exhibit 2, which I'm sure we'll be talking  
 7 about a lot. You can make a pile here, Mr.  
 8 Kehr. This will be the court reporter's  
 9 copies, but we'll try to keep that in order  
 10 should we have to go back to them. This is  
 11 Exhibit 2.  
 12 Mr. Kehr, I should warn you that if  
 13 you're writing things down, I might ask to look  
 14 at them. So any notes you write I might at the  
 15 end of the deposition have to look at the notes  
 16 just because that's how this process works.  
 17 BY MR. SIMON:  
 18 Q Exhibit 2, have you seen this document  
 19 before, Mr. Kehr?  
 20 A Yes, I have.  
 21 Q All right. I'll just state for the  
 22 record that this two-page document has been produced by  
 23 the defendants and it had a Bates stamp number when it  
 24 was produced and I think ZF Batavia produced it back to  
 25 us. I chose this copy because it was the best, clean

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)



PAGE 22

22

1 copy I had, but as far as I know, it's identical to the  
2 documents that we've traded back and forth in  
3 discovery. Mr. Kehr, what is this document?

4 A Well, this is a copy of a three-page --  
5 or I should say a tri-fold document that we prepared  
6 that was provided to the Ford employees who were  
7 interested in joining ZF Batavia and it, at a  
8 relatively high level, outlined the fundamentals of the  
9 programs.

10 Q Okay. And looking at your Exhibit 1,  
11 Mr. Kehr, there's a reason I've asked you to look at  
12 these documents together. Do you see in the paragraph,  
13 let's see, one, two, three, four, down, where it says  
14 summary attached?

15 A I'm sorry. Where do you see that?  
16 Okay.

17 Q All right. The reference to summary  
18 attached in Exhibit 1, is that referring to Exhibit 2?

19 A I don't remember.

20 Q Okay. If someone suggested that  
21 Exhibit 2 was the summary attached to Exhibit 1, would  
22 you have any reason to not believe that?

23 A No, I wouldn't.

24 Q Okay. Did you think that Exhibit 2  
25 which you have described, did that apply to the package

PAGE 23

23

1 of benefits and compensation that ZF Batavia was  
2 presenting to you in 1999?

3 A Certainly in most regards, yes.

4 Q Okay. Well, let's actually kind of  
5 walk through it I guess. On Exhibit 2 -- I see you  
6 looking through it -- is there anything in there, in  
7 Exhibit 2, that you didn't think applied to your  
8 package of compensation and benefits?

9 A Well, the -- I think the base salary  
10 starting at your current Ford salary would probably not  
11 be indicative of the offer letter that was presented.  
12 I believe we added this in here to indicate that there  
13 wouldn't be any, you know, pay reductions associated  
14 with the employment offers. So in starting at, I  
15 think that was basically a minimum in terms of the  
16 salary.

17 Q I don't want to get into -- I know it's  
18 embarrassing to talk about salaries on the record and  
19 I'm going to try to avoid that where I can but -- I  
20 don't know if embarrassing is the right word, but I  
21 know it's personal.

22 Did your salary go up or down when you  
23 went from your position at Ford Motor Company to CFO of  
24 ZF Batavia and ZFTT?

25 A My salary went up.

PAGE 24

24

1 Q Okay. You were going through the  
2 agreement identifying provisions that you didn't think  
3 specifically applied to your package of compensation  
4 and benefits. Are there any others?

5 A Well, this one states that I was --  
6 "Your classification will be Chief Financial Officer."  
7 I think that fell into the officer when it says "Broad  
8 banding replaces salary grades." So I guess that would  
9 certainly apply to me. "Authorized overtime will be  
10 paid." It's been probably 15 years since I've been  
11 paid overtime, so I didn't think that was going to work  
12 for me.

13 Q Okay.

14 A I did get paid twice a month. The  
15 annual incentive plan clearly applies to me. And  
16 there's two elements.

17 Q Did you say totally applies to you?

18 A There's two elements to my bonus. One  
19 is a guaranteed amount which is not subject to the  
20 annual incentive plan. And the other portion which is  
21 more substantive is a direct roll-out of this annual  
22 incentive plan as described here.

23 Q Okay.

24 A And I do participate in the merit  
25 program. I'm subject to all the benefits in terms of

PAGE 25

25

1 offerings, in terms of United Healthcare, dental,  
2 medicals. Opt outs would apply to me. Flexible  
3 spending accounts would apply to me. Life insurance  
4 applies. I believe in my latest contract there's a --  
5 I'm not sure if there's any incremental life insurance,  
6 but officers occasionally are entitled to other  
7 supplemental benefits, if you would. There may be a  
8 piece in my latest contract that this would be the  
9 minimum and there may be some added. Accidental death  
10 would probably apply to me. Dependents, disability,  
11 Ford money market applies. Tuition, vacations applies  
12 to me. Holidays, leaves, jury duty, maternity to the  
13 extent it would apply. Military, family and the 401  
14 savings plan.

15 Q Okay.

16 A Also the entire back stub applies to  
17 me.

18 Q Okay. I appreciate that. And I think  
19 you indicated that then the supplemental agreement that  
20 you signed that took you from '99 to January of 2002,  
21 it reflects a lot of these same terms, but by its  
22 nature supplements it with some additional terms  
23 regarding your bonus and --

24 A Well, I wouldn't say it's a  
25 supplemental agreement. I would characterize it as

EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 26

26

1 superceding or replacing this agreement.  
 2 Q Okay.  
 3 A Fundamentally it's a three-year  
 4 management contract, so it would reflect things that  
 5 managers negotiate in their contract and it's valid for  
 6 a three-year period and it's got stipulations about,  
 7 you know, if I resign, there's one outcome, if I'm  
 8 fired, then there's another outcome, if it's not  
 9 renewed for whatever reason, it's another outcome. And  
 10 it also stipulates bonus amounts, base pay and  
 11 obviously the transition bonus and some of the things  
 12 on here just no longer apply, but it does not by any  
 13 means go into all these kind of details. It just says  
 14 I'm subject to the ZF Batavia programs, as are other  
 15 salaried employees.  
 16 Q Okay. It kind of -- it references  
 17 Exhibit 2?  
 18 A What references it?  
 19 Q I'm sorry. This '99 to 2002 agreement  
 20 that you signed, you say it references Exhibit 2?  
 21 A No, I didn't say that.  
 22 Q Well, it doesn't reference it by name,  
 23 but you understand that even though all of these items  
 24 that are set out on Exhibit 2 -- you understand that  
 25 you're still entitled to them even though they aren't

PAGE 27

27

1 set out in this '99 to 2002 agreement; is that fair?  
 2 A I'm not sure if I understood the  
 3 question.  
 4 Q I thought you said that -- and I know  
 5 we don't have it in front of us and we'll ask for lots  
 6 of documents after the deposition, but -- let me just  
 7 stop there actually. Did you review that agreement  
 8 that we're talking about in preparation for this  
 9 deposition?  
 10 A No.  
 11 Q Okay. Did you review any documents in  
 12 preparation for this deposition?  
 13 A Review any documents? Well, we met  
 14 yesterday afternoon to discuss what to expect today and  
 15 there were some documents handed out. I believe this  
 16 was one of them. But we didn't go through any  
 17 documents in any kind of detail. It was more general.  
 18 Q Okay. I can ask you this and your  
 19 lawyer can pipe in. Do you know if you went over any  
 20 documents in preparing for the deposition to assist  
 21 your recollection of these events that ZF has not  
 22 already produced in this case?  
 23 A I don't know what has been produced in  
 24 this case. I mean, I guess I'll find out more as we go  
 25 through the exhibits. I don't know.

PAGE 28

28

1 Q Sure.  
 2 MR. SIMON: Well, I would just say, Mr.  
 3 Hunter, if you reviewed documents to assist his  
 4 recollection in preparing for the deposition  
 5 and it's a document that we don't have, that  
 6 I'm entitled to have that produced today. Is  
 7 there such a document?  
 8 MR. HUNTER: No. We didn't go through  
 9 anything that hasn't been produced.  
 10 MR. SIMON: Okay. That was the  
 11 question.  
 12 BY MR. SIMON:  
 13 Q All right. This '99 to 2002 agreement,  
 14 it doesn't set out all of the different items that are  
 15 in Exhibit 2, such as your dental insurance, your  
 16 disability insurance and the like; is that fair?  
 17 A That's correct.  
 18 Q All right. But does it refer to those  
 19 benefits at all, such as health insurance?  
 20 A It's a broad statement that says the  
 21 other -- I'm not sure exactly what it says, but  
 22 fundamentally it says any other benefit programs that  
 23 ZF Batavia offers to other salaried employees also  
 24 applies to me. It doesn't reference any document or  
 25 any detail. It just says if it's not reflected

PAGE 29

29

1 differently in the contract, then those other benefits  
 2 and whatnot apply to me, as all other salaried  
 3 employees.  
 4 Q I got you. So to the extent that in  
 5 Exhibit 2 you identified most of these items, although  
 6 not all, as applying to your employment at ZF Batavia,  
 7 as you sit here today, you believe that you're entitled  
 8 to the different benefits that apply to you that are in  
 9 Exhibit 2?  
 10 A Well, I think, as the record would  
 11 indicate, yes, I went down and most of these do apply  
 12 to me. In fact, all of them apply to one -- I think  
 13 one extent or another.  
 14 Q Okay. It's another way of saying as  
 15 you sit here today, you certainly expect ZF Batavia to  
 16 continue to provide these benefits to you as long as  
 17 you are CFO of ZF Batavia?  
 18 A No, I wouldn't say that. I would say  
 19 that at a point in time you have benefit programs that  
 20 -- there's no guarantees, they're subject to change  
 21 over time, and I'm sure some of these, frankly, since  
 22 '99 probably have changed and probably more changes  
 23 will be incorporated as the business conditions  
 24 warrant.  
 25 Q Okay. Exhibit 1, which you're not

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)



EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 30

30

1 sure, but let's assume that summary attached does  
2 reference Exhibit 2, you believe through December 31st,  
3 1999 that ZF Batavia would provide you the compensation  
4 and benefits that they identified in Exhibit 1 and then  
5 went into some more detail in Exhibit 2 through the end  
6 of 1999?

7 A Yeah, that's probably true. Yes.

8 Q Okay.

9 MR. SIMON: Mr. Kehr, as I see you get  
10 a drink of water, I neglected to mention at the  
11 beginning if you need to take a break at any  
12 time in the deposition, as long as there isn't  
13 a question still standing, you may certainly do  
14 that.

15 THE WITNESS: Okay. Thank you.

16 BY MR. SIMON:

17 Q While you're doing that, I'll hand you  
18 Exhibit 3. This is Exhibit 3. I don't know if you've  
19 ever seen Exhibit 3 before, Mr. Kehr.

20 A No, I have not.

21 Q I'll identify it for the record. It's  
22 a document with a Bates stamped number 38 and it's  
23 dated May 17th, 1999 and that's crossed out with  
24 November 30th, 1999 written in and it's addressed to  
25 Mr. Whisman and it's signed by Hassan Saleh. Who is

PAGE 31

31

1 Hassan Saleh? That's S-A-L-E-H, is his last name.

2 A Who is Hassan Saleh?

3 Q Yeah.

4 A I think he is currently our maintenance  
5 manager.

6 Q Okay.

7 A A salaried employee.

8 Q Was he formerly a Ford employee?

9 A Yes, he was.

10 Q Okay. Well, I'll identify for the  
11 record, too, Mr. Whisman in that letter is Wayne  
12 Whisman who is here today. He's one of the plaintiffs.  
13 You certainly don't have any reason to believe that  
14 this Exhibit 3 refers to anybody but Mr. Wayne Whisman;  
15 is that fair?

16 A That's probably correct, yes.

17 Q You're not aware of any other Whisman  
18 who works at ZF Batavia?

19 A Not to my knowledge.

20 Q Okay. There were a group of Ford  
21 salaried employees who worked in the Batavia plant  
22 prior to the joint venture beginning in 1998, right?

23 A The joint venture began in '99.

24 Q '99.

25 A Yes, your statement is correct.

PAGE 32

32

1 Q Okay. And there were meetings held in  
2 1999 with these Ford salaried employees to discuss the  
3 prospect of them joining ZF Batavia in 1999; is that  
4 correct?

5 A That's correct.

6 Q And ultimately certain Ford salaried  
7 employees were offered employment with ZF Batavia on  
8 the condition that they resign their employment from  
9 Ford Motor Company; is that right?

10 A I'm not sure if resign is the right  
11 word. But, yeah, they would have been made offers to  
12 join ZF Batavia and would have had to terminate their  
13 employment with Ford or whatever other term you might  
14 want to use.

15 Q Okay. And in connection with that,  
16 their agreeing to join ZF Batavia was initiated by a  
17 letter such as Exhibit 3 to those employees; is that  
18 right?

19 A I wouldn't necessarily say that --  
20 their employment with ZF Batavia would have been  
21 initiated once they transferred off the Ford payroll  
22 and onto ZF Batavia payroll, but discussions obviously  
23 would have initiated sooner and they would have  
24 culminated and resulted in the offer letter and the  
25 acceptance or declining of -- of an offer.

PAGE 33

33

1 Q All right. Would you agree that  
2 Exhibit 3 and Exhibit 1 -- and I'm comparing Mr.  
3 Whisman's letter and your letter -- that they're  
4 similar in their form? Do you have Exhibit 1 there?

5 A Yes, that's correct.

6 Q All right. And you see that Mr.  
7 Whisman's letter also references a summary attached?  
8 Do you see that there in the first full paragraph?

9 A Yes.

10 Q And do you know if that reference to  
11 summary attached is, in fact, a reference to Exhibit 2?

12 A I believe I answered that question  
13 before. I don't know. I don't remember, but it's not  
14 unreasonable to believe that that document was what was  
15 attached.

16 Q The reason I ask that question again is  
17 you said that in reference to your letter. I didn't  
18 know if you knew differently for Mr. Whisman's and the  
19 others. But you answered my question. All right.

20 Certainly Mr. Whisman -- it's noted on  
21 Exhibit 3 that he accepted this offer, that these terms  
22 set forth in Exhibit 2 regarding his compensation and  
23 benefits he would certainly, from your viewpoint,  
24 expect to apply to his employment at ZF Batavia?

25 MR. HUNTER: Objection. I don't know

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 34

34

1 how Mr. Kehr could know what his expectations  
2 were.  
3 BY MR. SIMON:  
4 Q Let's back up a second then. What was  
5 your role in offering employment to the Ford salaried  
6 employees in 1999?  
7 A Well, that's a pretty broad question.  
8 I did not get involved in any particular individuals  
9 other than perhaps my controller, but obviously I was  
10 involved in the process. So I'm not sure exactly how  
11 to answer your question.  
12 Q Well, at some point was there a  
13 decision made either between ZF Batavia and Ford or at  
14 Ford or at ZF Batavia that they desired to have certain  
15 Ford salaried employees who were working in the Batavia  
16 plant in 1999 to leave their employment with Ford and  
17 join ZF Batavia? Did you ever become aware of that  
18 decision at some point?  
19 A Well, during 1998 after the joint  
20 venture was made public through a press announcement by  
21 Jacques Nasser and Dr. Klaus Bleyer, there were  
22 discussions at, I think, Ford -- at that time I was  
23 still a Ford salaried employee and hadn't begun my new  
24 job as the CFO. I think Ford's expectation would have  
25 been that all of the Ford salaried employees in Batavia

PAGE 35

35

1 would have joined the new company.  
2 Q In 1998? Is that what you said?  
3 A I said Ford -- in 1998 during the  
4 discussions that I took place in, is Ford would have  
5 expected that all the Ford salaried employees in  
6 Batavia would potentially receive and possibly accept  
7 offers. Absent that, then Ford would have -- you know,  
8 and has ultimately found themselves in a position of  
9 not having all the employees at the factory join the  
10 new company.  
11 Q All right. When you're referring to  
12 1998 then, you're referring to your discussions with  
13 the people in Germany?  
14 A No. It would have been after those  
15 discussions in Germany. It would have been Ford --  
16 Ford-only-type discussions and how to structure the  
17 deal and how are we going to handle the employees and,  
18 you know, the different planning that goes around a  
19 joint venture arrangement involving \$500 million of  
20 annual sales.  
21 Q We don't need to make this an exhibit  
22 and I don't have copies for everybody, but here I'm  
23 handing you Ford Company's initial disclosures. You'll  
24 have to share with Mr. Hunter I'm afraid.  
25 MR. HUNTER: Are you going to make that

PAGE 36

36

1 4, Steve?  
2 MR. SIMON: No. I'm just showing it to  
3 you for reference because I think this may be  
4 helpful at this point.  
5 BY MR. SIMON:  
6 Q Mr. Kehr, this document identifies 46  
7 different people that may have knowledge regarding the  
8 subject matter of this litigation, so I just want to go  
9 over some of those people because some of these people  
10 may be the people who were involved in the discussions  
11 that you're about to testify about. If you could turn  
12 to page two in the document.  
13 A Okay.  
14 Q Let's see. I think I know who -- well,  
15 let's just take them order. That would be the easiest  
16 way to do it. The first person after your name, I see  
17 Tony Deshaw. Who is Tony Deshaw, if you know? And  
18 I'll obviously represent for the record this was Ford's  
19 disclosure and you work for ZF Batavia, but I have an  
20 inkling that you know who some of these people are, so  
21 --  
22 A That's correct. Tony Deshaw was the  
23 salary -- I guess, wage and benefits manager, worked  
24 for me for a period of time. And then when we hired  
25 Len Sennish, then Tony Deshaw sort of co-reported to

PAGE 37

37

1 myself and Len Sennish. Tony is no longer employed  
2 with Batavia now for two or three years I guess.  
3 Q He doesn't work for Ford either?  
4 A That's correct.  
5 Q Okay. And you think he separated his  
6 employment in 2000 or 2001?  
7 A I would think it would be, yeah,  
8 probably in that time frame. Yes.  
9 Q The address next to his name, 1981  
10 Frontwheel Drive, that's the address of the Batavia  
11 plant, correct?  
12 A That is correct.  
13 MR. SIMON: Okay. Mr. Hunter, can we  
14 possibly have Mr. Deshaw's last known address?  
15 Or should I direct this to --  
16 MR. HUNTER: It's actually in our  
17 initial disclosures.  
18 MR. SIMON: In your initial disclosures  
19 you have Mr. Deshaw's --  
20 MR. HUNTER: Well, his current address  
21 as of four or five months ago.  
22 MR. SIMON: Okay. Yeah. All right.  
23 MR. HUNTER: His name you'll see on the  
24 disclosures is actually Devere. Everybody  
25 calls him Tony, but it's Devere.

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 38

38

1 MR. SIMON: All right. That's what I  
2 assumed there.

3 BY MR. SIMON:

4 Q The next person is -- well, so Mr.  
5 Deshaw wasn't involved in any of these internal Ford  
6 discussions regarding the joint venture that you had  
7 with other Ford people in the '99 --

8 A That's correct.

9 Q Let me -- I'll finish the question. He  
10 wasn't involved in the discussions in 1998 that you had  
11 with Ford internally about the joint venture?

12 A That's correct.

13 Q All right. The next name is Connie  
14 Carlson of United Healthcare. Ms. Carlson, was she --  
15 did she attend the meeting in 1999 that was given to  
16 the salaried employees regarding health benefits?

17 A I don't remember.

18 Q Do you --

19 A We did use, I believe, United  
20 Healthcare at the time, so it wouldn't surprise me if  
21 she came in as a representative from United Healthcare,  
22 but I don't remember.

23 Q Okay. The next name is D. Glennings of  
24 Hartford. Do you remember what his role was?

25 A Well, I think Hartford was our

PAGE 39

39

1 insurance company provider in this time frame, so if I  
2 had to speculate, I'd presume he had the same role as  
3 Connie, perhaps came into the factory for the meeting  
4 we had in May and talked about the programs.

5 Q Okay. The next name is Lee Mezza of  
6 Ford Motor Company. Do you know who Mr. Mezza is?

7 A Yes, I do.

8 Q What is his current role with the  
9 company -- with Ford Motor Company, if you know?

10 A Yeah. I believe he's in the human  
11 resources area, a fairly senior manager. I'm not sure  
12 if he deals with only salary and/or hourly employment  
13 wage and benefit type things, but he's an HR  
14 professional.

15 Q And just so you'll understand the  
16 context, we were talking -- the time frame we're  
17 talking about, Mr. Kehr, is this time frame from you  
18 meeting with the people at ZF in 1998 and then we're  
19 going to take it through basically Mr. Whisman's  
20 letter, Exhibit 3. So I'm trying to figure out what  
21 discussions were had and who was involved, just so you  
22 understand, so there's no confusion about where I'm  
23 going with these questions. Because that's not my  
24 intent, to confuse you. What was Mr. Mezza's role in  
25 this effort?

PAGE 40

40

1 A Lee helped me define the wage and  
2 benefit program. I mean he was -- he wasn't  
3 responsible for getting the wage and benefit programs  
4 in place, but he was instrumental in identifying and  
5 whatnot the existing Ford Motor Company benefit  
6 structure. Lee did go with me to New York for two days  
7 of meetings where Tony Deshaw was also there and we met  
8 with Ernst & Young and went through a litany of wage  
9 and benefit discussions around what we would want to do  
10 for ZF Batavia, what was appropriate, what was  
11 competitive as a tier one supplier in the transmission  
12 business, or I should say the automotive business. And  
13 then Lee also worked very closely with us in defining  
14 specifically the Ford transition benefits that were  
15 unique to the Ford employees that would not be  
16 available to, let say, new hire employees off the  
17 street.

18 Q To the best that you recall, this two  
19 day meeting in New York, when was that?

20 A That would have been as late as, I  
21 would say probably in the March, April, 1999 time  
22 frame.

23 Q What was your role in determining what  
24 salary and package of compensation and benefits would  
25 be offered to these Ford salaried employees?

PAGE 41

41

1 A Well, I was sort of the technician, if  
2 you will. I looked at things in more of a macro level,  
3 so I never got involved, as I mentioned, in any  
4 particular individual's offers and whatnot, in terms of  
5 Ford transition, other than, like I say, maybe Mark  
6 Bugajski my controller. But rather we went off and we  
7 had a competitive salary analysis performed in the  
8 Cincinnati region to define, you know, basically what  
9 competitive offers would be for new hire employees in  
10 the Cincinnati region and that basically defined the  
11 new hire programs. And then for the Ford, you know,  
12 transition employees, as it implies, obviously they're  
13 going to come over at their Ford salaries or better and  
14 would be entitled to different benefits, a few  
15 different benefits. And I helped bring the whole thing  
16 together with Tony Deshaw and Lee Mezza and a few  
17 others.

18 I mean, this was a manufacturing  
19 company. It didn't have payroll. It didn't have  
20 banking, didn't have wage and benefits assigned or even  
21 identified for new hire employees. So all that had to  
22 be put together fundamentally in the February through,  
23 you know, possibly the May time frame of '99. And all  
24 the details would have been put in place and worked  
25 through presumably by the end of '99.

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 42

42

1 Q Okay. Let's move on to the next name  
2 then, Charlie Corbet.  
3 A I believe Charlie, he doesn't work for  
4 Lee. He works with Lee. I'm not sure in what  
5 capacity. But Charlie also helped Lee and I and a few  
6 others put together some of the information material.  
7 Q And is Charlie like Lee Mezza, in that  
8 he helped -- you said with Lee Mezza he helped define  
9 what the wage and benefits would be, as opposed to, I  
10 think you said, he wasn't responsible for them.  
11 And what I guess I'm trying to get at  
12 is: Who was responsible ultimately for deciding if not  
13 what individual employees are going to be offered, but  
14 generally speaking who made the decision that this is  
15 the package that we're going to offer to the group?  
16 A I would say I had primary  
17 responsibility for that with obviously subsequent  
18 approvals of the appropriate authorities and whatnot.  
19 We did have a meeting with the senior management team,  
20 at least those that were in place at the time, I'm  
21 thinking February, March, where Ernst & Young came in  
22 and hosted a two-day discussion around the philosophies  
23 of compensation in terms of, you know, traditional  
24 firms having relatively high fixed compensation, you  
25 know, very strong retirements and whatnot, you know, an

PAGE 43

43

1 IBM, Ford Motor Company kind of image. And then you've  
2 got on the extreme your dot-coms where, you know, lunch  
3 is free and everything else is stock options. So  
4 you've got that whole gamut.  
5 And we had a couple-day meeting about  
6 what was important to the company's compensation  
7 program in terms of, you know,, not just wage and  
8 benefits but also education, whatnot. And we had  
9 discussions, some stuff was documented, said okay,  
10 that's what we want to go -- that's the flavor or the  
11 results we're trying to achieve, and the program was  
12 structured around that. So I was responsible for the  
13 execution or whatever, but I certainly didn't do it in  
14 a vacuum.  
15 Q Okay. So in context of your making  
16 this decision or making the final decision on the  
17 package of compensation and benefits offered to the  
18 Ford salaried employees, I mean, you certainly did your  
19 homework, right?  
20 A I thought so, yeah.  
21 Q And you certainly were aware, generally  
22 speaking, how much -- what kind of salaries these Ford  
23 salaried employees had, right?  
24 A Generally aware, yeah.  
25 Q Okay. I mean, certainly when you

PAGE 44

44

1 offered -- when they were ultimately offered to work  
2 with ZF for these salaries and these packs of  
3 compensation and benefits, you didn't think you were  
4 killing the company by doing that, right?  
5 A I was not personally involved in any of  
6 these letters. I think I probably reviewed the draft  
7 of the letters and, you know, what was important and  
8 how we were going to lay the documents out, but as I  
9 said, I did not get involved with any particular  
10 individuals that -- the thought was that people would  
11 be carried over at their existing Ford salary and all  
12 those benefits and whatnot would apply for at least  
13 that period of time and in some cases I knew there were  
14 some promotional opportunities being offered to fill  
15 some certain positions and whatnot, but I personally  
16 did not get involved in that whatsoever. And as  
17 indicated, this is, you know, Hassan probably working  
18 with HR and whatnot made this offer letter. But I  
19 couldn't tell you if that was Mr. Whisman's Ford salary  
20 or not.  
21 Q Right. Even though you weren't -- I  
22 understand that you weren't directly involved in the  
23 individual offers to individual employees. When you  
24 were making this decision, were you actually CFO of ZF  
25 Batavia at that time?

PAGE 45

45

1 A Which decision?  
2 Q Well, the decision to -- you said you  
3 ultimately were responsible for the decision to offer a  
4 package of compensation and benefits to the Ford  
5 salaried employees, right?  
6 A Well, I don't believe that's what I  
7 said. What I said was I was responsible for preparing  
8 it and determining what we would want to do, but it was  
9 subject to the approval of the board and my senior  
10 management.  
11 Q Okay. But at some point did you  
12 recommend to those higher-ups that this is what we  
13 should do?  
14 A Yes.  
15 Q Okay. And even though you didn't know  
16 what individual salaries these Ford employees were  
17 going to get, you were aware generally of the package  
18 of compensation and benefits that you were giving to  
19 the group?  
20 A Yes.  
21 Q Okay. And you thought that in doing so  
22 it as a good deal for the company?  
23 A Which company?  
24 Q ZF Batavia.  
25 A I think it was -- it was a reasonable

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 46

46

1 balance between the requirements of ZF Batavia and the  
2 needs of the employees who were faced with a, you know,  
3 difficult decision to -- to leave one employer and go  
4 to a new one.

5 Q Okay. Did you think at that point that  
6 the Ford employees were overpaid?

7 A In terms of what?

8 Q Their worth to the company.

9 A Are you talking about base pay or  
10 benefits or --

11 Q All of it, their whole package of  
12 compensation and benefits that they had at Ford. Did  
13 you think they were overpaid?

14 A No.

15 Q Did you think you were overpaying the  
16 Ford salaried employees when they were offered this  
17 package of compensation and benefits?

18 A No. I believe Ford Motor Company does  
19 the appropriate benchmarking and they believe they have  
20 competitive wage and benefit programs for their  
21 salaried employees as it relates to, you know, an OEM,  
22 original equipment manufacturer.

23 Q All right. Back to the list, 14 and 15  
24 are Cary Jennings from Unicare and John Kahle from  
25 Fidelity. I take it these are just people that helped

PAGE 47

47

1 with the details of the health plan and then I guess  
2 the 401(k) plan?

3 A That's correct. Yeah, I do remember  
4 John specifically because the 401(k) plan was very  
5 important to make sure we had the right mix of funds  
6 and whatnot, so I personally got involved in a bit of  
7 that detail.

8 Q Okay. All right. Let's move on to  
9 Dennis Cirbes. I don't know if I'm pronouncing that  
10 right.

11 A Cirbes.

12 Q Okay. Cirbes, C-I-R-B-E-S. What's his  
13 position with Ford Motor Company?

14 A I think currently he was recently  
15 promoted to a vice president in charge of Ford's labor  
16 affairs, so he has the unfortunate circumstance of  
17 negotiating the Ford hourly contract. In September of  
18 '99, back in the joint venture, '98, '99 window, Dennis  
19 Cirbes worked in a group not dissimilar to Lee Mezza's  
20 group and I think Dennis at that time was primarily  
21 responsible for the discussions we had with the hourly  
22 representation, I guess, the international, national  
23 Ford department and perhaps the local union. He was  
24 primarily all labor relations, hourly.

25 Q Did Mr. Cirbes have any role in the

PAGE 48

48

1 offers to the salaried employees?

2 A No, not to my knowledge.

3 Q Moving on to Tim Hartmann. What is his  
4 position with the company?

5 A I'm not sure what Tim is doing today,  
6 but back in, like I say, the '98, '99 time frame here  
7 that you appropriately bracketed for me he was -- I  
8 believe he was working for Dennis Cirbes, so he would  
9 have dealt with the -- I believe mostly the hourly  
10 side.

11 Q You're not aware of any role he had  
12 regarding the Ford salaried employees?

13 A I don't believe so, no.

14 Q I think the next gentleman is present  
15 here. Is that Mike Warden? What's his current -- and  
16 he is here today, correct?

17 A Yes, he is.

18 Q What's his position with the company?  
19 I'm referring to Ford.

20 A Currently, I believe, Mike is the HR  
21 manager at Ford's Chicago assembly plant. As it  
22 indicates here, he had a similar position at Ford's  
23 Batavia Manufacturing location prior to the joint  
24 venture, then Mike helped us, stayed on for about a  
25 year, 15 months maybe, once the joint venture was

PAGE 49

49

1 consummated, if you will, and was a very valued  
2 contributor to the management team in Batavia.

3 Q What then was Mr. Warden's role in '99  
4 regarding the offers to the Ford salaried employees?

5 A What do you mean, in terms of the  
6 offers?

7 Q Well, was he, for instance, involved in  
8 explaining to the Ford salaried employees at the plant  
9 what they could expect in terms of compensation and  
10 benefits at ZF Batavia?

11 A Well, there was a series of discussions  
12 that started in late 1998 when the joint venture first  
13 became known. And obviously it's potentially a  
14 troubling circumstance for the people working in a  
15 factory like that, so there was a series of  
16 communications, you know, Q's and A's and whatnot. But  
17 I don't believe, to my knowledge, that Mike actually  
18 went through and defined the wage and benefit programs  
19 for ZF Batavia because Mike wasn't going to be working  
20 for ZF Batavia. And, you know, I think he would have  
21 fundamentally deferred that to myself and Tony Deshaw,  
22 who was putting together the package. I'm sure Mike  
23 sat in some discussions about what we were doing and  
24 whatnot, but I don't think he would have a vested  
25 interest in the benefit side of it and I would imagine

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)



PAGE 50

50

1 that the actual offer letters were produced out of  
2 Mike's area.

3 Q So Mr. Warden wasn't really a decision-  
4 maker in terms of what ultimately the terms of the  
5 package of compensation and benefits to the employees  
6 would be?

7 A I would say from the benefit standpoint  
8 that's probably a true statement you said. I don't  
9 know what Mike's -- or don't remember exactly what  
10 Mike's role was in the planning, the actual offer in  
11 terms of base salary. We would have defined the AIP  
12 structure for Mike, so he wouldn't have had to  
13 necessarily do that effort, but he would have been  
14 very, I think, instrumental in the base pay side.

15 Q Okay.

16 A He had access to the Ford Motor Company  
17 payroll records and knew what people were making and  
18 would have known what assignments they were taking in  
19 terms of the employment offers.

20 Q At some point -- and we haven't gone  
21 through all the names here. At some point in this  
22 process did you or others decide that the Ford salaried  
23 employees needed to hear from Ford managers about this  
24 offer to join ZF Batavia?

25 A Well, I think the Ford employees needed

PAGE 51

51

1 to hear from Ford management. They worked for Ford,  
2 yes. But I'm not sure what you said in terms of their  
3 offers with ZF Batavia. Ford management did not  
4 particularly get involved in determining what that  
5 offer would be. I mean, Lee supported the effort, but  
6 it was the joint venture management team's  
7 responsibility to put in the appropriate compensation  
8 and benefits structure.

9 Q Are you saying that there was no one at  
10 Ford Motor Company who had say in what was going to be  
11 offered to the employees who were leaving Ford and  
12 going to ZF Batavia?

13 A Oh, yeah, they -- they had some input  
14 to it, yes. As I just mentioned, Lee Mezza was very  
15 supportive and then they obviously had to go back to  
16 the legal route to make sure that the retirement and --  
17 the retirement benefits in terms of both pension and  
18 post-retirement medical were a couple of the big issues  
19 that needed to be sorted out inside of Ford, and Lee  
20 Mezza worked on that with us and fundamentally helped  
21 us get the Ford agreement that that's how, in fact,  
22 they would handle those benefits for the transition  
23 employees.

24 Q We're going to keep moving through the  
25 list here. The next one is Jeff Faistenhammer.

PAGE 52

52

1 A Yeah, Faistenhammer. He worked in  
2 Ford's HR group. He was a fairly senior manager and I  
3 believe he dealt primarily on the salaried side. I do  
4 recall Jeff.

5 Q You said he worked on the salaried  
6 side?

7 A Yeah, I mean, Ford Motor Company splits  
8 their human resources departments fairly strongly  
9 between salaried and hourly. He was clearly on the  
10 salaried side, if I recall.

11 Q So what role, if any, did he play in  
12 this effort to have the Ford salaried employees join ZF  
13 Batavia?

14 A I believe I had a couple of meetings  
15 with Jeff where we laid out sort of broadly what we  
16 were thinking in terms of the offers and whether he had  
17 any input or, you know, wanted to suggest changes and  
18 whatnot. So he basically showed an interest in -- in  
19 the propositions, if you will, that we were coming up  
20 with to attract some of the Ford employees to the joint  
21 venture.

22 Q Okay. Did Mr. Faistenhammer or anybody  
23 else from Ford tell you that it was important for the  
24 Ford salaried employees to have this package of  
25 compensation and benefits explained to them by a Ford

PAGE 53

53

1 Motor Company management official?

2 A Not that I remember.

3 Q But to your knowledge, did someone from  
4 Ford Motor Company explain to these employees what the  
5 package of benefits was going to be at ZF Batavia?

6 A Oh, yeah, Lee Mezza presented, if I  
7 recall, in the May meeting specific elements of that  
8 package, particularly as it related to the retirement  
9 benefits that Ford was going to provide. But as I  
10 indicated, they did not take an active role and would  
11 not certainly have communicated anything as it relates  
12 to the ZF Batavia, you know, programs. That was ZF  
13 Batavia's responsibility.

14 Q Moving on to the next name on this  
15 list, George Lindstrom. Who is Mr. Lindstrom?

16 A George Lindstrom worked in the Ford  
17 human resources area again and he was very instrumental  
18 in the discussions with, I think, Tim Hartmann and  
19 Dennis Cirbes on the hourly side.

20 Q Okay.

21 A I don't recall George taking much  
22 interest in the salaried folks.

23 Q All right. Let's move to the next name  
24 which I hope is the site of our next deposition. Who  
25 is Cindy Walters?

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 54

54

1 A I think Cindy Walters was a human  
2 resource person again and I think she had  
3 responsibility for the hourly, but I'm not sure. I  
4 don't know. I don't believe she was instrumental -- if  
5 you're trying to find out who you want to talk to next,  
6 I don't think she was instrumental in the '98, '99  
7 discussions. I think she came on sometime after that.

8 Q I haven't asked this directly. I know  
9 we're jumping around a bit. But the conversations you  
10 had internally with Ford after you met with ZF people  
11 in Germany, did you meet with any of the people that we  
12 have already gone over here who were at Ford in that  
13 time?

14 A Yes. Yes, I have.

15 Q Who was that?

16 A Lee Mezza, Charlie Corbet. I'm sorry.  
17 You're talking between the summer of '98 and January  
18 the 1st of '99? Prior to the joint venture or --

19 Q I'm not sure actually of the time. You  
20 said that after you went to Germany in '98, then there  
21 were internal Ford discussions about if this was a --  
22 about the joint venture possibility.

23 A Yeah.

24 Q And so I'm trying to figure out who was  
25 involved in those discussions and especially those

PAGE 55

55

1 discussions that had to do with the labor force. So  
2 Mr. Mezza was one of them?

3 A Yeah, I've got to believe I met with  
4 Lee prior to January of '99, but I guess I can't be  
5 certain.

6 Q Okay. Would you have met with Mr.  
7 Corbet?

8 A That would be the same as Lee. If it  
9 wasn't in late '98, it would have been in early '99. I  
10 do recall meeting with Dennis Cirbes at the national  
11 Ford department office, Tim Hartmann. I did have some  
12 meetings with Mike Warden, Jeff Faistenhammer, George  
13 Lindstrom. I don't believe I sat in any meetings with  
14 Mike Bush nor Cindy. And I think that's about where we  
15 were.

16 Q Well, as we go through this list -- and  
17 I'll try to move through it expeditiously here -- if  
18 you could identify those people that you talked to  
19 after you met with the ZF people in '98 and then you  
20 continued on this Ford discussions, I'm trying to  
21 identify who those people are you talked to. And I'm  
22 also trying to identify those people that were involved  
23 in putting together this package of compensation and  
24 benefits to the Ford salaried employees.

25 MR. HUNTER: Steve, just so we're

PAGE 56

56

1 clear, so we're back to talking -- what I  
2 thought we had been talking about, mid '98  
3 through the end of '99, that time period?

4 MR. SIMON: That's generally the time  
5 period, yes.

6 MR. HUNTER: Okay.

7 THE WITNESS: As it relates  
8 specifically to internal Ford and Ford only  
9 discussions?

10 MR. SIMON: Well --

11 THE WITNESS: Because there was clearly  
12 an evolving process, right?

13 BY MR. SIMON:

14 Q Right, right. And I realize you don't  
15 remember every meeting you attended, but I'm just  
16 trying to see how everyone fits in, so that would be  
17 the best way, to go through the list.

18 A Jim Quinlan. I met with Jim Quinlan,  
19 it would have been in '98. I think Faistenhammer and  
20 he might have been in the same meeting with me. He was  
21 a salaried guy. Don't believe I met with Carolyn  
22 Malone. She -- she was working in Batavia at the time  
23 and certainly wouldn't have partaken in any Ford Motor  
24 Company specific proprietary discussions. I don't know  
25 who Marty is. Keith Kleinsmith, wouldn't know. Ann

PAGE 57

57

1 Appleton was hired in much later, so she was not even a  
2 player at the time. I don't know who Quentin is, nor  
3 Michelle Garvey or Robert Kuhl. Vic Kane was, to my  
4 knowledge, not involved in any of the -- the internal  
5 Ford discussions.

6 Q You skipped over Mark Leksan.

7 A Mark Leksan, wouldn't have had any  
8 discussions with him either. I believe at the time he  
9 was the controller at the Batavia facility.

10 Q Okay.

11 A Nor Jim Solberg. Len Sennish was hired  
12 at the end of '99 and wouldn't have been party to any  
13 internal Ford discussions. Rhoshonda Knox, don't  
14 believe so. Earl Taliaferro, I don't believe so. Doug  
15 Szopo was a planning individual. He wouldn't have  
16 gotten in any salary labor discussions, nor Dave  
17 Prystash, nor Dick Bair, who was the plant manager.  
18 Alan Evans, don't know who that is. Sharlene Gage.  
19 Sharlene Gage may have worked for Lee Mezza doing some  
20 of the detailed pension-type calculations and stuff.  
21 Ed Thompson, the name doesn't ring a bell.

22 Q Okay. You may have -- I didn't hear  
23 you comment on a couple here. Page four, Karen Horan,  
24 Ford of Australia, number 24 on my list.

25 A I think Karen Horan came in subsequent

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 58

58

1 to the '98, '99 window, but it may have been on the  
2 back end.  
3 Q Okay. James Suber, I didn't hear you  
4 say that.  
5 A I'm not sure who Jim Suber is. Maybe I  
6 should. I don't know. It doesn't ring a bell.  
7 Q And I'm not sure if I heard Jonathan  
8 Tavalin.  
9 A Doesn't ring a bell either.  
10 Q All right. Let's see if I'm coming  
11 close here. These internal Ford discussions that you  
12 had after meeting the ZF people in '98, you would have  
13 talked to Dennis Cirbes, Tim Hartmann, Mr. Warden, Mr.  
14 Lindstrom, and I think you said Mr. Faistenhammer.  
15 A Yeah.  
16 Q Anybody else who isn't on the list or  
17 is on the list, I just didn't say there, who you would  
18 have talked to during that time?  
19 A And we're talking specifically  
20 salaried-type, labor -- or salaried employee  
21 discussions?  
22 Q Yes.  
23 A Because there was -- it would be a very  
24 long list if you want to get into all the other  
25 business aspects.

PAGE 59

59

1 Q Let's stick to the labor side of this.  
2 A I believe that was -- to my  
3 recollection, that was basically the field of folks  
4 that we were dealing with.  
5 Q When were you first approached about  
6 becoming the CFO of this new joint venture?  
7 A That would have been late '98, 1998.  
8 Q Who approached you about that?  
9 A ZF, Orchard. ZF, Jim Orchard.  
10 Q What was Mr. Orchard's position with  
11 ZF?  
12 A At the time Jim was the CEO for ZF's  
13 North American operations.  
14 Q Well, did you have to be sold on it?  
15 A Yeah. There were some discussions,  
16 both on the ZF and the Ford side, as with many of the  
17 senior management people.  
18 Q Okay. At what point did some of these  
19 terms that are in Exhibit 1, this letter to you dated  
20 September 30th, 1999, at what point did that take  
21 shape?  
22 A I'm sorry. Could you be more specific?  
23 Q Well, you first were approached by Mr.  
24 Orchard, you said, in late '98 about being the CFO and  
25 then we have this September 30th, 1999 letter to you

PAGE 60

60

1 from Dave Adams setting forth your salary and bonus and  
2 that sort of thing. Was all this decided right before  
3 the date of this letter, September 30th, 1999 or had it  
4 been hashed out much earlier than that?  
5 A Well, when Jim approached me, it was --  
6 in late '98, it was just a general question of would I  
7 be interested and whatnot, and I said sure, given the  
8 right conditions and whatnot. It seemed like an  
9 interesting challenge to launch the new company. So he  
10 went back and, I believe, talked with Ford management.  
11 And then subsequent to that I would have gotten into  
12 some discussions with my boss, who at the time would  
13 have been Tom Gorman. And I was -- we talked  
14 specifically about a range, I think, for a starting  
15 salary and a bit about the bonus structure, but none of  
16 the details in terms of vehicle allowances, signing  
17 bonuses or transition bonuses were ever discussed.  
18 Those things evolved over time. None of the wage and  
19 benefits was in place obviously in late '98, so it was  
20 a relatively high level -- I'd say a little bit more of  
21 a gentleman's agreement, but there was no -- no  
22 contract written. It was just general compensation  
23 levels so that I could go put in place what had to be  
24 put in place in terms of defining all the structure  
25 we're talking about here.

PAGE 61

61

1 Q And so previous to September 30th, 1999  
2 you had sort of a gentleman's agreement; is that what  
3 you said?  
4 A I was getting paid by Ford Motor  
5 Company. I was on the Ford Motor Company payroll, I  
6 believe, up through probably September/October of 1999.  
7 And I was being compensated at base salaries that --  
8 probably reflective of that number there on the first  
9 paragraph, base pay.  
10 Q When did you officially become CFO of  
11 ZF Batavia?  
12 A January 1st, 1999.  
13 Q So January 1st, 1999 through September  
14 30th, 1999 you were being paid by Ford?  
15 A Well, the date of that offer letter  
16 doesn't necessarily indicate the day one changes their  
17 payroll.  
18 Q Okay.  
19 A So it would have been probably sometime  
20 after that letter.  
21 Q Was that unusual, that you would have  
22 been ZF Batavia's CFO during that period, but you were  
23 paid by Ford Motor Company?  
24 A I would say for a joint venture company  
25 being crafted out of a Ford manufacturing facility, no,

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 62

62

1 that wouldn't be unusual at all. There was no payroll  
2 for ZF Batavia until, I believe, the summer of '99, so  
3 anybody who was working there was either a Ford Motor  
4 Company or a ZF employee in terms of the payroll.

5 Q Okay. Going back to our Exhibit 3, Mr.  
6 Whisman's letter. I mean, do you consider this an  
7 employment agreement between ZF Batavia and Mr.  
8 Whisman?

9 MR. HUNTER: Objection. Requires a  
10 legal conclusion outside the scope of this  
11 witness' knowledge. You can answer the  
12 question.

13 THE WITNESS: I'm sorry. State your  
14 question again.

15 BY MR. SIMON:

16 Q Do you consider Exhibit 3 to be an  
17 employment agreement between Mr. Whisman and ZF  
18 Batavia?

19 A I would not believe that's an  
20 employment agreement, no.

21 Q Okay. I think we were referring to  
22 your letter, Exhibit 1, that you expected that ZF  
23 Batavia would honor the various items that are set  
24 forth in Exhibit 1 and then also are referenced in the  
25 summary at least through the end of 1999; is that

PAGE 63

63

1 right?

2 A Can you be more specific?

3 Q I think you said earlier that you  
4 expected when you got Exhibit 1 -- and we assume that  
5 at some point you accepted that -- that you understood  
6 that that was your salary and your compensation and  
7 benefits through at least '99, end of 1999.

8 A Well, yeah. I mean, the bonus, though,  
9 is subject to the final performance results of the  
10 company and myself individually and whatnot, so there  
11 was no guarantees in terms of the bonus. But yeah, I  
12 would assume the monthly salary and some of these other  
13 things were, yeah, determined at the time and this was  
14 a high-level summary of the benefit program surrounding  
15 that letter.

16 Q All right. So given your perspective  
17 on your own agreement, would you -- would there be any  
18 reason that you know of for Mr. Whisman not to think  
19 that ZF Batavia was going to honor the items set forth  
20 in Exhibit 3 while he was a ZF Batavia employee?

21 MR. HUNTER: Again, objection. What  
22 Mr. Whisman thinks is not within the scope of  
23 knowledge of this witness.

24 THE WITNESS: I don't know what Mr.  
25 Whisman believes at that time or today,

PAGE 64

64

1 frankly.

2 MR. SIMON: All right.

3 BY MR. SIMON:

4 Q Even though you individually didn't  
5 review each of these letters, which is correct -- did  
6 you review Exhibit 3 before it was given to Mr.  
7 Whisman, to your knowledge?

8 A No.

9 Q Okay. But we've discussed your role in  
10 putting this package together. Did you think that ZF  
11 Batavia was offering -- was making an agreement with  
12 Mr. Whisman and the other Ford salaried employees to  
13 come on board with ZF Batavia?

14 A I don't know what you mean by an  
15 agreement.

16 Q Did you think ZF Batavia was making  
17 certain promises to Mr. Whisman that they were going to  
18 honor?

19 A I don't know what you mean by certain  
20 promises. I'm sorry.

21 Q Well, the promises set forth in Exhibit  
22 2, for instance. In the middle of Exhibit 2, Mr. Kehr,  
23 it has -- it references vacation and it explains how  
24 many weeks of vacation the person is going to get. You  
25 see that there?

PAGE 65

65

1 A Yes. Well, I make a distinction  
2 between a promise and a summary of the benefits and  
3 whatnot that are available to the salaried employees.  
4 But I wouldn't say anything particular was promised as  
5 it relates to each and every single line item on here  
6 because frankly at some point in time possibly the  
7 medical/dental employee contribution rates may have  
8 been ultimately something a little bit different than  
9 this. I don't know because this was done mid '99 and  
10 all the details of the programs were worked out with  
11 the service providers through '99.

12 But I think this adequately -- to  
13 answer your question, adequately represents a  
14 reasonable assurance of what one would have expected to  
15 receive from the company in terms of the benefits as  
16 well as the base compensation and bonuses.

17 Q All right. When you say assurance, do  
18 you mean that from your perspective you understood that  
19 ZF Batavia could change their mind about some of these  
20 assurances at some later date?

21 A Well, I believe it says this brochure,  
22 you know, includes key features applicable to any of  
23 the Ford employees and that, you know, subject to  
24 change. And there's also other documents that were  
25 kind of behind this that obviously were put in as

EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 66

66

1 disclaimers that say you've got to go to the base  
2 document to the extent there's a disagreement and plans  
3 described here subject to change.

4 So when you go out with these things,  
5 you try and define them the best you can and then go  
6 work to deliver it, but, you know, there's no promises,  
7 no guarantees. But I think this adequately represents  
8 what was fundamentally put in place, yes.

9 Q Let's see.

10 MR. HUNTER: Is this a good point to  
11 take a break? It just seemed like you were at  
12 a break there, so --

13 MR. SIMON: Oh, well, I don't know that  
14 I was, but -- I didn't mean to be so dramatic.  
15 Sure.

16 MR. HUNTER: Okay.

17 (RECESS)

18 BY MR. SIMON:

19 Q You understand you're still under oath,  
20 sir?

21 A Yes, sir.

22 Q All right. This is Exhibit 4. Take a  
23 look at that. It's a multi-document -- a multi-page  
24 document. Mr. Kehr, I'm going to ask you about  
25 individual pages as we go through it, but I want to

PAGE 67

67

1 give you a chance to familiarize yourself with the  
2 document. Have you had a chance to do that?

3 A Yes.

4 Q Okay. Exhibit 4 appears to be  
5 documents that were distributed in connection with a  
6 meeting on May 27th, 1999; is that correct?

7 A I don't believe they were distributed.  
8 I'm not sure if this was indicative of the material we  
9 went through or not, to be honest with you. This one  
10 page, I don't know if I recall having that being  
11 presented, but most of the material I recognize and was  
12 presented at this meeting.

13 Q Do you know why this particular  
14 document was prepared that is Exhibit 4?

15 A It was prepared for purposes of having  
16 it looks like two meetings, different times of the day,  
17 to share in more detail perhaps maybe when the brochure  
18 -- in terms of what at least the key elements were as  
19 relates to the Ford salaried transition employees.

20 Q Are you unsure if this document that's  
21 Exhibit 4, if this was given just to the presenters at  
22 the meeting or if this was given to the attendees or  
23 some other group of people?

24 A I'm sure the presenters would have had  
25 a chance to review it. In fact, some of the presenters

PAGE 68

68

1 provided the material. But this was not, to my  
2 knowledge, distributed.

3 Q Okay. How did it come to pass that  
4 this meeting was held?

5 A Come to pass?

6 Q Whose idea was it to have this meeting,  
7 if you know?

8 A Well, it would have been the joint  
9 team, myself included, that felt it was needed to  
10 address more specifically some of the issues that were  
11 important to the Ford employees who might consider  
12 accepting offers from ZF Batavia.

13 Q When you say the joint team, again,  
14 we're trying to get all the people identified. You had  
15 identified a group of people that you had had internal  
16 discussions with at Ford following your meeting with ZF  
17 in '98. Who was on the joint team?

18 A Well, if you look at the presenters, I  
19 believe myself, Tony Deshaw, Lee Mezza and Charlie  
20 Corbet would have been fairly instrumental in pulling  
21 the material together.

22 Q Is there anybody else at ZF Batavia or  
23 at ZF who you were working with in connection with this  
24 offer of employment to the salaried Ford employees?

25 A Well, I'm sure Mike Warden would have

PAGE 69

69

1 been a party to some of the discussions around it,  
2 maybe not some of the specifics of the material. But,  
3 I mean, any time you've got a circumstance like this,  
4 communication is important. So, yeah, we would have  
5 had probably Mike's involvement and the presenters, but  
6 I don't recall having any other specific meetings with,  
7 you know, Ford or Batavia people to review or otherwise  
8 comment on this material.

9 Q And not just this material, but, again,  
10 just generally putting together the package of  
11 compensation and benefits that were presented to the  
12 Ford salaried employees, who else was involved at ZF  
13 Batavia other than you?

14 A As I indicated, Mike Warden would have  
15 been involved. I don't recall specifically, you know,  
16 any other detailed discussions. I'm sure Dave Adams, I  
17 would have had some discussion with him around some of  
18 the elements of this. We did do, you know, as  
19 indicated previously, a benchmark of Ford benefit  
20 programs. We also looked at the ZF North American  
21 benefit programs, and Dave and I would have gone  
22 through and agreed that, yeah, we thought this was  
23 right. For instance, Dave was very instrumental in  
24 saying we wanted to get paid or thought we ought to get  
25 paid twice a month. I would have preferred monthly, so

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)



PAGE 70

70

1 there were some discussions like that.  
 2 Q Okay. Anybody --  
 3 A He was a ZF employee in North America  
 4 and obviously he knew more about their programs, at  
 5 least in terms of being an employee, than I would have  
 6 just looking at their -- some of the summaries of the  
 7 programs that they were currently offering.  
 8 Q Before Mr. Adams became president/CEO  
 9 of ZF Batavia, he was employed at ZF of North America?  
 10 A That's correct. He was the plant  
 11 manager at their Gainesville, Georgia transmission  
 12 plant.  
 13 Q Mr. Warden was an employee of Ford at  
 14 the time?  
 15 A That's correct.  
 16 Q Okay. Anybody else other than Mr.  
 17 Adams who was an employee of ZF Batavia or ZF that you  
 18 had discussions with in formulating this package of  
 19 compensation and benefits for the salaried employees?  
 20 A Lee Mezza, Charlie Corbet.  
 21 Q From Ford?  
 22 A Yes.  
 23 Q Anybody else from ZF besides Mr. Adams?  
 24 A Well, maybe this is a distinction  
 25 without difference, but in this time frame there were

PAGE 71

71

1 no employees of ZF Batavia, okay? You were on the  
 2 payroll of Ford or payroll of ZF.  
 3 Q Then I'm just looking for anybody who  
 4 was an employee of ZF who you had these discussions  
 5 with besides Mr. Adams.  
 6 A No. Other than Mr. Adams, I don't  
 7 recall.  
 8 Q Okay.  
 9 A And Mike -- well, Mike is an employee  
 10 of Ford.  
 11 Q Okay.  
 12 A But I want to make sure it's clear that  
 13 I did have the two-day meeting facilitated by Ernst &  
 14 Young that defined our compensation philosophies and  
 15 whatnot, but by no means, you know, any of this detail.  
 16 Frankly most people other than, you know, HR  
 17 professionals and myself who was deeply involved  
 18 wouldn't, you know, typically get into this kind of  
 19 minutia, if you will.  
 20 Q Right. Other than Dave Adams then, to  
 21 the best you can recall, all of your discussions and  
 22 communication in connection with putting together this  
 23 package of compensation and benefits to the Ford  
 24 salaried employees was with other Ford employees such  
 25 as Mr. Mezza, Mr. Corbet, Mr. Warden?

PAGE 72

72

1 A I had conversations with Bonnie  
 2 Gorichan, who was a Ford attorney who helped us with  
 3 the tri-fold brochure which is Exhibit 2. She  
 4 obviously worked with Lee because Lee was a non-  
 5 attorney, so Lee did some stuff in the background that  
 6 I know Bonnie was an instrumental player. I did talk  
 7 to her specifically and exchange some e-mails, but I  
 8 can't recall any other Ford employees specifically or  
 9 ZF.  
 10 Q Just so the record is clear, the only  
 11 ZF employee that you recall discussing this subject  
 12 with was Dave Adams?  
 13 A Up to this point in time, that's  
 14 correct. As I indicated, we did need to go to the  
 15 board of directors for approval of the overall  
 16 compensation and benefits structure. And on the board  
 17 we have three -- at the time we had three Ford board  
 18 members and three ZF board members, to which Jim  
 19 Orchard was one of them.  
 20 Q This is a good time to ask you about  
 21 that. When the joint venture was created, how many  
 22 members were on the board of directors?  
 23 A Six. Three from each parent.  
 24 Q And were there non-voting members on  
 25 the board?

PAGE 73

73

1 A That's a good question. Dave Adams  
 2 believes that he was a non-voting board member, and I  
 3 think maybe at the time he was. It's unclear whether  
 4 he was or wasn't, but I'm not sure if it's relevant.  
 5 Q Any other non-voting members?  
 6 A Not at the time, no.  
 7 Q Okay. So when you went to the board of  
 8 directors regarding this package presented to the  
 9 salaried employees at Ford, you were reporting to the  
 10 six people on the board of directors plus maybe Mr.  
 11 Adams?  
 12 A Yeah. Dave Adams and I go to the board  
 13 and we present the joint venture material. Tom Schank  
 14 is the company secretary, so obviously he was present.  
 15 Yeah, it would have been -- you know, those six were  
 16 the decision-makers.  
 17 Q Well, I know we're going through a lot  
 18 of names here, but who were those six people? You  
 19 identified one.  
 20 A At that point in time, I know -- I  
 21 think it was Jim Orchard, Dr. Michael Paul.  
 22 Q What was that name?  
 23 A Dr. Michael Paul.  
 24 Q Okay.  
 25 A And I believe the third ZF was Gunter

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 74

74

1 Hemminger.  
 2 Q You want to spell his last name the  
 3 best you can?  
 4 A H-E-M-M-I-N-G-E-R.  
 5 Q All right. Who were the Ford  
 6 representatives on the board?  
 7 A I -- I don't recall. There's been a  
 8 fair amount of changeover in the Ford board members, so  
 9 I'd be speculating as to who exactly was on the board  
 10 at that point in time.  
 11 Q Are any of those three ZF members still  
 12 on the board?  
 13 A Two out of the three are, yes.  
 14 Q Which two?  
 15 A Mr. Hemminger and Dr. Paul.  
 16 Q Do you know who the -- who's the other  
 17 ZF person on the board? Is there one?  
 18 A Well, Jim Orchard was the third. He's  
 19 no longer a board member.  
 20 Q Today.  
 21 A Today there is four from each parent.  
 22 Q Okay. When was that change made?  
 23 A Probably in the last -- it may have  
 24 been as recent as the fall of 2002 or it could have  
 25 been over the summer. But it's been in the last year I

PAGE 75

75

1 believe.  
 2 Q All right. Are there any non-voting  
 3 members on the board currently?  
 4 A Yeah. There's -- today we have Glenn  
 5 Warren, Gerhard -- Dr. Gerhard Wagner.  
 6 Q How do you spell that last name?  
 7 A Wagner, W-A-G -- Wagner. Wagner in  
 8 American.  
 9 Q Sure. Okay. That helps. So Mr.  
 10 Warren and Dr. Wagner. And is that the only two non-  
 11 voting members?  
 12 A Yes.  
 13 Q And which companies do they represent?  
 14 A Glenn Warren works for Ford Motor  
 15 Company and Gerhard works for ZF.  
 16 Q When we say ZF, we're referring again  
 17 to ZF Friedrichshafen?  
 18 A No. There's a legal entity called ZF  
 19 Saarbrucken which is a division of ZF. I believe  
 20 Gerhart is an employee of ZF Saarbrucken.  
 21 Q I got you. We won't go through these  
 22 names right now, but the other eight people on the  
 23 board are four from Ford Motor Company and four from  
 24 ZF?  
 25 A That's correct.

PAGE 76

76

1 Q Okay. Just generally what's the  
 2 mechanism or procedure, practice for Ford  
 3 representatives joining the board and leaving the board  
 4 which you kind of made reference to?  
 5 A I'm sorry?  
 6 Q You made reference to Ford people  
 7 coming on the board and leaving the board so, I guess,  
 8 is there a reason for that that you're aware of?  
 9 A Well, yeah. Back in the early -- early  
 10 days of the joint venture there were -- and they were  
 11 by any standard senior management, but they were not,  
 12 you know, vice president-type folks from Ford, and this  
 13 was a -- difficult is probably not the right term. You  
 14 know, when you set up a new company like this and  
 15 you're talking about upwards of a \$700 to \$800 million  
 16 dollar investment, it's a very, very important project  
 17 to both parents, and the Ford board members that were  
 18 assigned at the time were not influential enough to  
 19 make things happen within Ford, particularly around the  
 20 product vehicle center, you know, the execution of  
 21 vehicle programs and whatnot and they were a bit, you  
 22 know, stymied, if you will, by the various factions  
 23 within Ford. So Ford basically moved those folks off  
 24 and elevated more senior board members who could be  
 25 more influential in terms of causing events to take

PAGE 77

77

1 place and I believe there was a retirement or two here  
 2 and there. Maybe one was reassigned to a new job and  
 3 it just wouldn't have made sense to remain on the  
 4 board. And that's, generally speaking, sort of what --  
 5 what occurred.  
 6 Q When did --  
 7 A But it's been fairly stable in the last  
 8 couple of years.  
 9 Q When did Ford make that move to get  
 10 more senior people on the board?  
 11 A I think it may have been 2000.  
 12 Q Okay. Were there minutes taken of  
 13 meetings that you had with the board in connection with  
 14 the package offered to the Ford salaried employees?  
 15 A We prepare material in hard copy for  
 16 the board and there's also minutes taken, yes.  
 17 Q And you retain those for a number of  
 18 years?  
 19 A Yes, yes.  
 20 Q Would you expect that the minutes from  
 21 those meetings in '99 regarding the package would still  
 22 be retained?  
 23 A I would say they'd be -- yes. The  
 24 board presentation material and the minutes of the  
 25 board meeting would have been retained, but I can

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 78

78

1 assure you that by no means did the board see this  
2 level of detail as it related to either the Ford  
3 transition employees or our overall salary and wage and  
4 benefit plan. It would have been obviously much more  
5 succinct.

6 Q Just so I understand, you said you  
7 produced a hard copy to the board. Do you mean you  
8 produced some sort of materials for them to look at  
9 during the meeting?

10 A Yes. They get a board book.

11 Q Okay. Do you know if -- perhaps I can  
12 use some shorthand. When I'm referring to the package  
13 of compensation and benefits that were offered to the  
14 Ford salaried employees in '99, I might just refer to  
15 that as the package; is that okay? If I say the  
16 package, you'll understand what I'm referring to?

17 A Not -- not exactly.

18 Q Well, then I'll keep --

19 A Exhibit 2 or --

20 Q Well, I won't use any abbreviations  
21 then. I just mean kind of the subject generally of the  
22 compensation and benefits package that was offered to  
23 these salaried employees. My question was whether that  
24 subject was discussed at more than one board meeting in  
25 '99, to the best of your recollection. Or was there a

PAGE 79

79

1 particular meeting that you recall where that was  
2 discussed?

3 A Well, I definitely do recall one  
4 meeting where we got approval, you know, to proceed.  
5 It wouldn't surprise me if perhaps a board meeting or  
6 two prior to that we may have shared with them the  
7 direction we were heading to make sure that people were  
8 comfortable before we had the -- you know, the program  
9 completely buttoned up.

10 Q Do you recall any difficulties or  
11 objections that the board members raised regarding this  
12 package of compensation offered to these Ford salaried  
13 employees?

14 A I don't recall any specifically, no.

15 Q Or even generally?

16 A No.

17 Q It's fair to say that you were the  
18 critical decision-maker in deciding the package that  
19 would be presented to these Ford salaried employees?

20 A Well, I wouldn't characterize it as a  
21 decision-maker. I did have some authority delegated to  
22 me as an officer to go make certain decisions and, you  
23 know, meeting with Ernst & Young, I went through things  
24 from maternity leave to, you know, one thing after  
25 another and had to take a decision that says "I agree

PAGE 80

80

1 with this. I want it tailored or modified or..." --  
2 yeah, I mean, constructing the whole thing and then  
3 taking it back and getting other people's input and  
4 whatnot and then getting it approved as presented to  
5 the board.

6 Q And it was your decision to decide what  
7 was actually going to be presented to the board  
8 ultimately?

9 A Dave Adams and I jointly prepared the  
10 board material.

11 Q I guess what I'm saying is these other  
12 people that had input, it was input that they -- such  
13 as the Ford employees, Lee Mezza and others that you've  
14 identified, they gave you input regarding these various  
15 benefits and compensation and then you and, I guess,  
16 Mr. Adams ultimately decided this is what we're going  
17 to put together and we're going to present it to the  
18 board; is that a fair summary?

19 A Well, I don't think I'm going to  
20 disagree. Lee Mezza helped us fully understand the  
21 Ford programs that currently existed, which is a very  
22 important element to understand. And then Lee also  
23 helped with "Okay, what if I got a green field company?  
24 What would you do differently?" "Ford Motor Company,  
25 if you had a green field opportunity to start afresh

PAGE 81

81

1 with some stuff, what would you do?" "Well, I  
2 wouldn't put a pension program in place, I'll tell you  
3 that, a defined benefit plan."

4 So, you know, some of those things they  
5 talked about as being, you know, HR professionals  
6 because as good as Mike Warden is, he's not -- you  
7 know, what we saw in Batavia was not the capability to  
8 define this. It was all managed by Ford centrally and  
9 ZF has no central North American compensation HR  
10 professionals. So Lee was helping me construct kind of  
11 a green field site scenario and bringing together the  
12 Ford programs and here's what we have for ZF and, you  
13 know, Lee was very helpful. But, again, Tony Deshaw  
14 and myself made many of the decisions as to what  
15 exactly we were going to define. And then we had -- as  
16 I indicated, I've had some discussion with Dave Adams,  
17 being the president, about what he thought about some  
18 elements and, as I indicated previously, there were  
19 some modifications made in terms of the number of times  
20 employees would be paid and some of those things.

21 Q Regardless of what Mr. Deshaw told you,  
22 you had the authority whether to say yea or nay on any  
23 given proposal he gave you; is that fair?

24 A Well, to the extent it was material  
25 enough that he thought he should bring it to my

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 82

82

1 attention.

2 Q Okay.

3 A But, yeah, I mean, I was deeply

4 involved in going through all the different elements of

5 it. That was basically my full-time assignment for two

6 or three months, to go get all of that done.

7 Q Okay. Now, you made reference to a

8 defined benefit plan. Now, the Ford salaried employees

9 had a defined benefit plan while they were Ford

10 employees?

11 A Yes.

12 Q And you were told that if you had to

13 start from square one, you wouldn't have a defined

14 benefit plan?

15 A Correct. I mean, most new companies

16 move away from -- they don't want to do defined benefit

17 plans and, you know, 401(k)s and other instruments

18 which seem to be the way to go.

19 Q But these Ford employees who came to ZF

20 Batavia, they were told that they would continue to get

21 their benefits under the defined benefit plan, correct?

22 A Not exactly. It's described in the

23 brochure. Ford agreed to lock in the years of service,

24 but would allow employees who retired from ZF Batavia

25 to use their last five-year income levels to determine

PAGE 83

83

1 what it would be -- what their Ford pension would be

2 calculated at.

3 Q Okay. The only reason that you offered

4 any sort of defined benefits plan to the Ford salaried

5 employees coming to ZF Batavia was because Ford Motor

6 Company already had this preexisting obligation?

7 A We don't offer a defined benefit plan

8 at ZF Batavia.

9 Q What do you mean by green field?

10 A Well, you have a -- I'd describe a

11 gutted Ford manufacturing facility. You know, there is

12 no purchasing on site, very limited accounting

13 financial support, no product development, no sales and

14 planning, very limited IT infrastructure, you know, no

15 payroll, no wage and benefits. I mean, it was a Ford

16 manufacturing plant and Ford has most of all their

17 activities centralized and administered, you know, out

18 of Dearborn. So, I mean, obviously it wasn't a green

19 field site in the literal sense, but if you're going to

20 put a wage and benefit program in place, for all

21 intents and purposes it was a green field site because

22 none had existed previously.

23 Q And I apologize. I think I asked you

24 this, but I can't recall the answer. Whose idea

25 ultimately was it to have the meeting on May 27th,

PAGE 84

84

1 1999?

2 A I don't recall that anybody ultimately

3 had the decision we were going to have the meeting or

4 not. I believe it was Tony, myself, Lee, probably Mike

5 and perhaps some other people at Ford that said yeah,

6 we ought to go talk to the employees and provide them

7 more detail. And leading up to this meeting,, it was

8 established probably, I don't know, I guess in our

9 minds, the people working on this, you know, a month,

10 two months in advance that we are going to work towards

11 and get all this work done so we can go have this

12 meeting and get on with making employment offers and

13 executing what needed to be done. So it was clearly a

14 joint milestone event.

15 Q Okay. Were you aware of any anxiety in

16 the plant prior to this meeting about what exactly

17 would become of the Ford salaried employees?

18 A I'm sorry. Did you say any anxiety?

19 Q Any anxiety on behalf of the Ford

20 salaried employees about what their future held.

21 A Yeah. There was a mixed gamut. I

22 mean, for instance, myself, my avenue and what was

23 going to happen to me was fairly clear. There were

24 some salaried -- Ford salaried employees who frankly

25 weren't interested in entertaining any propositions

PAGE 85

85

1 about joining the company. And then there was

2 everything in between. Some people were very

3 interested, some were not so interested, some were

4 frankly skeptical, some were very -- just concerned

5 about, you know, things as it relates to them as

6 individuals, their families, all the circumstances

7 that, you know, come into play when you're dealing with

8 160 employees.

9 Q Okay. I think you had said earlier in

10 the deposition that when you met with ZF back in

11 Germany in '98, that it was Ford's expectation that all

12 of the Ford salaried employees would come on board the

13 joint venture once it was created; is that right?

14 A The -- the meetings with ZF in the

15 summer of '98 dealt with much higher-level issues, in

16 terms of the contribution values, you know, the cash,

17 the business plan. It was much higher, you know, in

18 terms of getting the fundamentals in place that said

19 the parents wanted to proceed and then evolving from

20 that kind of a decision to go pursue, then all kinds of

21 things were looked at. I mean, IT systems, I had

22 meetings with 60 IT professionals inside of Ford to

23 make sure that on January 1st that the plant ran and

24 things didn't collapse and paychecks were run and all

25 those things.

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 86

86

1 And in the meetings with Ford that  
2 evolved, okay, how do we want to handle, you know, the  
3 Ford employees in the factory. Well, they're going to  
4 be very important to the -- the ability to manufacture  
5 transmissions. I mean, that is our jobs. So the  
6 expectation is that we would keep the Ford salaried  
7 work force, you know, in place and, in fact, there may  
8 have been even maybe a six-month window where people  
9 were not allowed to -- to move out of Batavia to ensure  
10 that we protected Ford's, you know, transmission  
11 deliveries.

12 But, you know, Ford would have -- would  
13 have wanted, you know, all -- all the Ford employees  
14 fundamentally to join the new company. In fact, many  
15 transactions are structured that way. If you're at  
16 this site and it's sold or otherwise merged or  
17 whatever, some instances even structured that salaried  
18 employees have to change employment. There is no  
19 option for other deals. So, you know, we worked  
20 through those outcomes or possibilities, but not in  
21 front of ZF in the summer of '98. That -- those  
22 discussions would have taken place more in the fall.

23 Q All right.

24 A And even into the following year.

25 Q But ultimately not all Ford salaried

PAGE 87

87

1 employees were offered employment at ZF Batavia; is  
2 that right?

3 A That's correct.

4 Q Why is that?

5 A Well, there's two things. Of the 160  
6 salaried employees that were in Batavia at the time, I  
7 believe that it was -- I don't know exactly but in the  
8 range of, let's say, 30 to 40 employees, and we sent a  
9 letter out and said, you know, would you be interested  
10 in entertaining an offer to join the new company, and  
11 30 to 40 employees, I think, Ford employees, may have  
12 said Well, I'm not really interested but thanks  
13 anyway.

14 And then there was a group of meetings  
15 held by the Ford management team in Batavia at the time  
16 who knew the work force. Many of us hadn't set foot in  
17 the facility at all, didn't know the people and weren't  
18 in an appropriate position to make assessments and  
19 there was discussions of each and every employee of the  
20 120, let's say, 130 who were interested in receiving  
21 offers. There were some discussions about "Is this  
22 employee going to be -- do you think that they would  
23 work well in this new, uncertain environment?" You  
24 know, do we think this and that.

25 And it was an assessment made as to

PAGE 88

88

1 what we thought their ability to support the joint  
2 venture would be going forward. And that list then was  
3 provided and I think of the 120 or 30 names on that, I  
4 think -- God, there's probably 85, 90 percent of the  
5 employees ultimately received offers. There was a  
6 select handful that for various reasons offers were not  
7 made.

8 Q What were the various --

9 A And I'm not sure of those. I'm not  
10 sure of the specifics. I didn't participate in those  
11 discussions.

12 Q Those were discussions among Ford  
13 management you said?

14 A They were the existing Ford salaried  
15 management team that had been in Batavia prior to the  
16 joint venture and were still in place frankly up  
17 through this point in time.

18 Q Do you know who those people were?

19 A Oh, I could name some -- I'm not sure  
20 who was in the actual meeting. I mean, it --

21 Q Jerry Priest, is that like one of the  
22 managers who would have been involved in these  
23 discussions?

24 A I don't recall. Like I say, I wasn't  
25 in the meetings. I don't know who all participated.

PAGE 89

89

1 Q All right. But this group of people  
2 then reported back to you that we're going to make  
3 offers to 85 to 90 percent?

4 A Yeah. They produced by name who would  
5 -- who they thought, you know, ought to receive offers.

6 Q And this was done sometime before the  
7 May 27th meeting?

8 A I don't now if that was done before or  
9 after May. I mean, I think the offer letters may have  
10 started to go out. I mean, here are some, it looks  
11 like they're as early as May, so maybe it was complete.  
12 I just don't recall exactly the time that that list was  
13 produced.

14 Q Well, let's go through Exhibit 4 while  
15 we've got it in front of you there. You obviously were  
16 indeed at this meeting, correct?

17 A Yes, both meetings.

18 Q Both meetings. We assume both meetings  
19 are referring to the morning and afternoon?

20 A That's correct.

21 Q Okay. Let's see. It looks like you  
22 talked about a couple of different topics here, such as  
23 salary compensation. Do you see where it says that on  
24 the agenda?

25 A Yes, I do.

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)



EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 90

90

1 Q If you look to what's -- that Bates  
2 stamp number with all the zeros at the top, 000003,  
3 it's titled Ford transitional employee base salary  
4 bands, do you see that?  
5 A Yes.  
6 Q Now, is this something that -- this  
7 particular single document, did you produce this at the  
8 meeting? Did you put it on an overhead, anything like  
9 that?  
10 A I guess -- I'm not -- since I got this  
11 from you and we did not provide any handouts at the  
12 meeting, it's a little bit unclear to me whether this  
13 represents what was actually shown or not. So you'll  
14 have to bear for some time with me because I have not  
15 gone back and revisited what I would have believed to  
16 be the original document versus what you've now  
17 presented to me.  
18 But I do believe that this slide was  
19 one of the slides that was presented to the salaried  
20 employees at the time, defining the salary bands and  
21 the minimum and the maximums within the ranges and  
22 compares it to their, at the time, existing salary  
23 grades within Ford Motor Company.  
24 Q You kind of gave me the lay of the land  
25 there. There was a slide show that accompanied the

PAGE 91

91

1 presentations?  
2 A It was all a slide show.  
3 Q All slide show, okay. And so even  
4 though you're not sure, it may be that these different  
5 documents that make up Exhibit 4 may, in fact, be the  
6 copies of the slides that were shown the employees?  
7 A Well, they may or may not be exactly  
8 what was shown because, like I said, you've given this  
9 to me and I don't know if this is exactly what was  
10 shown or not.  
11 Q Just so you understand, this was  
12 produced by ZF Batavia to us, this particular set of  
13 documents.  
14 Well, just generally what do you recall  
15 talking -- stepping back for a second, how many --  
16 where was this held? It was held in the cafeteria, I  
17 see?  
18 A Correct.  
19 Q And all the people who are listed as  
20 presenters were obviously there, the best you can  
21 recall?  
22 A Yes, they were there.  
23 Q And how many people attended among the  
24 employees?  
25 A Well, we had two meetings because we do

PAGE 92

92

1 have salaried employees that work both afternoon and  
2 evening shifts, so we set it up so that it was  
3 convenient for them to attend one or the other. And I  
4 would say probably -- clearly the morning session would  
5 have been the more heavily populated than the afternoon  
6 session, but, I mean, there were large numbers. I'm  
7 not sure if it was every single individual of the 160,  
8 but a large number of salaried employees attended this  
9 meeting.  
10 Q To the best you recall, what did you --  
11 did you make -- it looks like you made some  
12 introductory remarks at the beginning of each meeting.  
13 Do you recall what you said? I don't mean verbatim,  
14 but did you explain at the beginning of the meeting  
15 that we're going to go through the package that we've  
16 put together that we're offering you if you want to  
17 join ZF Batavia? I mean, did you make it clear to the  
18 group what this meeting was about?  
19 A Yes. Yes, we certainly did. I mean, I  
20 would have gone -- probably indicated that, you know,  
21 we've gone back, looked at the Ford programs and  
22 compared those and used those frankly to help create  
23 some of these things. And would have told them that,  
24 yeah, this is -- we want to give some details and then  
25 make available for individual questions. Obviously an

PAGE 93

93

1 individual's question about a health care plan might be  
2 personal in nature, so we told them that there would be  
3 plenty of opportunity at the back end for Q's and A's  
4 and whatnot. So we'll got through the presentation and  
5 be available to answer questions.  
6 Q Okay. So regarding the salary  
7 compensation, what information were you trying to  
8 convey to them about that?  
9 A You're back on the 03 page?  
10 Q Yeah.  
11 A Well, if you recall, we -- at the time  
12 we said salary compensation and we agreed that we were  
13 going to have bands, salary bands rather than specific  
14 salary grades. So we said, you know,  
15 administrative/clerical band would be comparable to  
16 Ford grades one through four, the GSR band was grades  
17 five through eight, the MR bands would be grades nine  
18 through ten, and based upon the Ford, you know, salary  
19 structure and whatnot and what we were going to do in  
20 ZF Batavia, this would be the bands that people would  
21 fall in as it relates to the new salary band structure  
22 versus the Ford salary grade structure.  
23 Q Whose idea was it to have the band  
24 structure?  
25 A Well, I would have fundamentally agreed

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 94

94

1 with the concept. It was one of those green field  
 2 sites. In fact, Ford Motor Company, subsequent to all  
 3 this, has, in fact, gone to bands as well and it was  
 4 what a company who was establishing such a structure  
 5 would probably put in place. So it was, you know,  
 6 state of the art or best practices or whatnot.  
 7 Q It refers to AC band. What does AC  
 8 stand for?  
 9 A Administrative/clerical.  
 10 Q And GSR?  
 11 A General salary role.  
 12 Q And you've already said MR is  
 13 management role.  
 14 A Management role.  
 15 Q We'll just go through in order, Mr.  
 16 Kehr. Let's mark number four up at the top corner of  
 17 this page, and we're still on Exhibit 4. There  
 18 obviously was some discussion about the vehicle  
 19 program?  
 20 A Yes.  
 21 Q It looks like that was you who talked  
 22 about that.  
 23 A Yeah. I believe we followed the  
 24 agenda.  
 25 Q Okay. Let's go to the next page,

PAGE 95

95

1 number six. It says ZF Batavia overtime rates for  
 2 salaried employees. Do you see that?  
 3 A Yes.  
 4 Q It looks like, based on the agenda,  
 5 that's Mr. Deshaw who spoke about that; is that what  
 6 you recall?  
 7 A I believe so, yes.  
 8 Q And even though you weren't the speaker  
 9 at that point -- you attended the entire meeting even  
 10 when you weren't speaking, right?  
 11 A Yes, both meetings.  
 12 Q Okay. Both meetings. Thank you. What  
 13 does number six of Exhibit 4 -- what does that  
 14 represent to you?  
 15 A What it represents is the rate to which  
 16 salaried employees would be paid for overtime. And I  
 17 believe at the time this was consistent with the Ford  
 18 pay structure for overtime.  
 19 Q You said consistent. Do you know if it  
 20 was different in any way from the Ford practice at the  
 21 time regarding overtime?  
 22 A Well, if you're asking specific about  
 23 this page, my recollection is these rates, the  
 24 over/unders and whatnot is exactly what Ford offered at  
 25 the time.

PAGE 96

96

1 Q Okay. And obviously these charts  
 2 provide that, for instance, I guess that's during the  
 3 regular work week if your salary is under \$4100 a  
 4 month, then you get time and half for all overtime  
 5 hours worked?  
 6 MR. HUNTER: Objection. That's a  
 7 mischaracterization of the document.  
 8 BY MR. SIMON:  
 9 Q Well, Mr. Kehr, you describe what the  
 10 top part of that chart means when it says monthly  
 11 salary under \$4100, time and one-half. What does that  
 12 refer to?  
 13 A It refers to approved overtime would be  
 14 compensated at time and a half if you made less than  
 15 \$4100 a month. At this point in time there were no  
 16 unique ZF Batavia programs in place or policies or  
 17 anything else. So what would have been underlying  
 18 this, to answer your question, I think you're getting a  
 19 little bit into the overtime approval processes and  
 20 whatnot. We would have used Ford's pre-approved  
 21 overtime policy and, you know, that was approved, would  
 22 have been compensated, and not all hours worked are  
 23 compensated by definition. So approved overtime,  
 24 subject to the then existing Ford policy, the overtime  
 25 procedures as they relate to the Batavia plant, this

PAGE 97

97

1 would have been the rate at which people were  
 2 compensated.  
 3 Q Well, what was the Ford policy at the  
 4 time regarding overtime for salaried employees?  
 5 A Well, I can talk to it generally. I  
 6 mean, Ford Motor Company has and to some degree  
 7 continues to pay salaried employees for overtime.  
 8 There's assumptions in terms of casual overtime that is  
 9 uncompensated and casual work hours and salaried  
 10 positions don't always get overtime.  
 11 The finance group typically is a little  
 12 bit more stringent. The expectation is that, you know,  
 13 people have a job to do and they need to get the job  
 14 done. When you go to the manufacturing area, it's a  
 15 little bit different. If you have to run a rate -- you  
 16 know, run a line you have to schedule the overtime.  
 17 And that's why Ford, I think, at the time does pay for  
 18 overtime is because it is a production facility unlike,  
 19 you know, some more administrative-type positions.  
 20 Q Are you saying what was being  
 21 communicated at this May 27th meeting was that if you  
 22 -- to these Ford salaried employees at the time is that  
 23 if you join ZF Batavia, we're going to follow Ford's  
 24 overtime policy if you join ZF Batavia; is that what  
 25 was said at this meeting?

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 98

98

1 A I can't recall exactly what was said.  
2 Like I say, this page deals with the compensation  
3 amounts for approved overtime and I think what we put  
4 in the brochure, you know, authorized overtime will be  
5 paid. And I'm not sure what was communicated to the  
6 employees, but practically speaking we were continuing  
7 to operate the factory fundamentally, you know,  
8 subject to the existing Ford policies and procedures,  
9 you know, absent any -- any new guidelines. That was  
10 fundamentally the way we were operating the factory at  
11 this time.

12 Q Even though you can't recall  
13 specifically, was it generally the thrust of the  
14 presentation on this overtime issue that we're going to  
15 follow Ford's overtime policy and we're going to follow  
16 these rates that are on page six?

17 A I'd say that's a fair characterization.

18 Q Okay.

19 A At least at this point in time.

20 Q And earlier when you were talking about  
21 Ford's policy, do you understand Ford's policy at time  
22 that they didn't pay for casual time? They didn't pay  
23 overtime for casual time?

24 A I think -- I don't know. I don't  
25 recall actually reading the thing in detail. I did

PAGE 99

99

1 work for Ford for 15 years and, you know, depending  
2 upon where you are, in what areas and whatnot, I don't  
3 recall getting paid overtime for, you know, like I say,  
4 a long, long, time and I work, you know, 60, 65-hour  
5 weeks.

6 Q But in this presentation the people  
7 speaking, some from Ford Motor Company, some from ZF  
8 Batavia, they were advising this group of employees who  
9 were considering going to ZF Batavia that they, in  
10 fact, would be paid overtime for their work generally  
11 speaking in the same way that they were being paid  
12 overtime under Ford, right?

13 A Yeah. Yeah, I don't think that's an  
14 unfair characterization. It would have been a  
15 continuation of Ford's -- the Ford policy regarding  
16 overtime at this point in time, yes.

17 Q Okay. Did anybody at that meeting say  
18 anything like Well, we're going to pay overtime for a  
19 period of time, but then there might come a time when  
20 we're not going to pay overtime at all? Did anybody  
21 say anything like that at the meeting? Either meeting,  
22 the morning or afternoon meeting.

23 A I doubt there was any specific  
24 statements made about any, you know, one aspect of this  
25 package or whatnot. But I would believe that there

PAGE 100

100

1 were the appropriate characterizations around this kind  
2 of material perhaps in my introduction that, you know,  
3 this is what we've currently defined and, you know, as  
4 you see in the brochure, everything is subject to  
5 change and revision over time and it certainly wouldn't  
6 have been characterized as this is a guaranteed,  
7 assured, lifetime commitment from the company.

8 Q You're sure that you said that?

9 A Yes, I'm sure that in the meeting there  
10 would have been a characterization that this is a  
11 point-in-time look that we're going to offer and that  
12 it is, you know, subject to change as conditions  
13 warrant.

14 Q Did anybody else say that besides you  
15 among the presenters?

16 A I don't recall.

17 Q Then there was a question-and-answer  
18 session for each meeting? It's listed on agenda as  
19 having time for one.

20 A There was a combination of question-  
21 and-answer sessions after the meeting that would have  
22 been in a group forum. And then I believe some of  
23 these folks who presented, like Connie and Carl and  
24 John, those folks were off in separate rooms and  
25 available I think for two or three days for anybody

PAGE 101

101

1 could come in and talk to them about specifics as it  
2 deal with their circumstance to better understand how  
3 these things would apply to them and what the  
4 stipulations would be.

5 Q Did anyone during the meetings that you  
6 attended on May 27th, among the group that was  
7 listening to the presentation, ask a question about  
8 What do you mean by everything's subject to change or  
9 any sort of concern like that raised by someone in the  
10 group? Do you recall anything like that?

11 A No, I don't recall any broad-brush  
12 questions of that nature. I believe a lot of the -- of  
13 the questions that we got were more specifically  
14 directed towards the retirement aspects of the program  
15 because that was a big issue, was the retirement  
16 programs.

17 Q These other people, presenters, you say  
18 they made themselves available after this meeting for  
19 maybe a couple of days to field individual questions  
20 from the group?

21 A I wouldn't say all the presenters. The  
22 ones that were specific to the benefit programs or  
23 whatnot were available. And obviously, you know, I  
24 have an open-door policy and some Ford employees did  
25 come in and talk to me specifically after the meeting

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 102

102

1 about certain aspects of the program.  
 2 Q Do you recall who?  
 3 A I think Rick Williams may have come in  
 4 and talked to me. There was a handful of other folks.  
 5 I can't recall their names. Some of them were hourly  
 6 even. Particularly the salaried folks on the shop  
 7 floor, some of them were concerned about the  
 8 disposition of the Ford company stock as related to the  
 9 401(k) plan.  
 10 Q This May 27th meeting, was this for  
 11 salaried and hourly or just the salaried?  
 12 A Salaried only.  
 13 Q Okay. Did anybody who was a presenter  
 14 or even somebody who wasn't presenter, like Mike  
 15 Warden, tell you at anytime in '99 or in or around this  
 16 meeting on May 27th that these salaried employees at  
 17 Ford are concerned that this package is being made  
 18 available now, but it's subject to change at a moment's  
 19 notice? Were there any of those kind of concerns  
 20 raised, not directly to you, but reported to you by  
 21 some of the other members of the team?  
 22 A Well, I'm not sure if I'd characterize  
 23 it as it can be changed at a moment's notice. There  
 24 was probably some concerns, some questions about the  
 25 longevity of the joint venture and, you know, what

PAGE 103

103

1 assurance do we have if we join a new company that, in  
 2 fact, it's even going to exist down the road. They  
 3 were much more, I think -- what came to my attention  
 4 was more general discussions around those types of  
 5 things. I don't remember specifically my getting  
 6 involved. There were some Q's and A's that went around  
 7 and I do remember reading those. But it was probably a  
 8 better part of 12 months that there was a communication  
 9 roll-out strategy including Q's and A's and obviously  
 10 people's level of comfort with the new company. And  
 11 the management team evolved and improved over time when  
 12 you started seeing people and whatnot. So I guess I  
 13 can't -- I don't know if I can answer your question  
 14 specifically.  
 15 Q Is it your testimony that when you were  
 16 at the May 27th meeting and you were explaining this  
 17 package with its compensation and benefits are subject  
 18 to change, are you saying that you referred  
 19 specifically to the last paragraph on the second page  
 20 of Exhibit 2?  
 21 A No, I can't -- I can't testify to that.  
 22 What I can tell you is as we prepared the material, we  
 23 were advised by counsel to make sure that it wasn't  
 24 portrayed as that this is a done deal and it's a  
 25 guarantee or promise and that the appropriate caveats

PAGE 104

104

1 need to be communicated that indicate that, you know,  
 2 things are subject to change and, in fact, that's  
 3 probably one of the reasons why this thing wasn't  
 4 distributed in hard copy.  
 5 MR. SIMON: Off the record for a  
 6 second.  
 7 (OFF THE RECORD)  
 8 BY MR. SIMON:  
 9 Q Moving to page seven, Mr. Kehr, and I  
 10 think we're still on Exhibit 4. And I think this was  
 11 one that you talked about, the annual -- I'm sorry.  
 12 The annual incentive plan was presented by Mr. Deshaw;  
 13 is that what you recall?  
 14 A I don't recall, but I imagine based  
 15 upon the agenda, that Tony would have discussed this  
 16 page.  
 17 Q And what generally then, using page  
 18 seven as a guide, what generally was the annual  
 19 incentive plan that was being presented to this group?  
 20 A Well, I think really what we talked  
 21 about on this page was a bit of a movement from the  
 22 Ford historical practices. You see on the bottom the  
 23 profit sharing numbers that Ford employees enjoyed from  
 24 salary grades one through nine were the same percentage  
 25 of income, and we showed those historical payouts and

PAGE 105

105

1 we indicated that we were going to be using an  
 2 incentive plan that was more leveraged towards higher  
 3 -- what's the right term -- employees with more  
 4 responsibility would have fundamentally more  
 5 compensation at risk. So you'll see the maximum  
 6 percent of base for the administrative/clerical is less  
 7 than the historical number and for the MR bands it was  
 8 actually higher at 11.3. So -- and then it would be  
 9 indicated that we were targeting a payout at 75 percent  
 10 of the maximum and that, you know, if we meet our  
 11 objectives, then that would be the -- you know, the  
 12 percentages within those bands that would be available,  
 13 you know, for distribution. And that we were in  
 14 essence structuring a program that was more variable  
 15 compensation based rather than fixed.  
 16 Q And turning to Exhibit 2, if you could,  
 17 that references the annual incentive plan at the top.  
 18 Do you see where it says -- I'll just read this. It  
 19 says Annual incentive plan reward program based on ZF  
 20 Batavia's success determined by product quality, timing  
 21 and delivery of new and existing products and  
 22 profitability.  
 23 A Mm-hmm.  
 24 Q And it then was explained to the  
 25 employees at this meeting and perhaps other

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)



EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 106

106

1 conversations you had that whether or not you get any  
2 bonus at the end of the incentive plan depends on these  
3 things that I just read in Exhibit 2, right?

4 A No. I'm not sure if I agree with that.  
5 What was shown here was the AIP structure as relates to  
6 the salary bands and the 75 percent target and what  
7 would be used to determine pools of incentive plan  
8 models. This wasn't necessarily and I wouldn't have  
9 characterized this as single individuals, here's what  
10 you should expect.

11 If you are in this band between the  
12 high and the lows, this is our overall program  
13 structure and reflecting the philosophies of what we  
14 were trying to accomplish in having more at risk  
15 compensation for those who have more ability to  
16 influence the results of the business. And then the  
17 next two pages we showed what the Batavia preliminary  
18 objectives were for 1999 and this, in fact, is what  
19 generates the pool of funds available to be distributed  
20 to the employees as, you know, management deems  
21 appropriate.

22 Q So the bonus pool is determined by how  
23 the company, that being ZF Batavia, met these  
24 objectives?

25 A Yeah. And there's a range of outcomes

PAGE 107

107

1 around the different objectives. You know, if you  
2 over-achieve, you get a 150 percent for that line item.  
3 If you under-achieve, you only get 25 percent or zero.  
4 So there's a range of outcomes against these, to which  
5 you do a weighted average and calculate what the plan  
6 is in terms of the overall accomplishments to those  
7 objectives.

8 Q So looking at number seven, if somebody  
9 who has a general salaried -- in a general salaried  
10 role, GSR, is it right that their bonus would max out  
11 at \$7692 if the company met all of its objectives?

12 A No. I think what it says is it can  
13 range between zero and \$7692 at, you know, the '99 time  
14 frame, it would be in that range. And if the company  
15 met on average its objectives, the payout would be at  
16 the target amount. Only if you over-achieved the  
17 objectives would you get paid in excess of the target  
18 amount.

19 Q All right. And all of this was  
20 explained during the meeting?

21 A Yes, I believe so.

22 Q Okay. Was there any discussion at the  
23 meeting that you recall about whether working overtime  
24 would affect your bonus on the annual incentive plan?

25 A Oh, gosh. I don't recall anything

PAGE 108

108

1 specifically tying the annual incentive plan to  
2 overtime hours worked. I think that would have been  
3 potentially inappropriate for a meeting like this. But  
4 clearly the flavor of the ZF Batavia's compensation and  
5 benefit program is performance-based results by  
6 individuals working both on their own behalf in teams  
7 and for the company, and that was clearly the  
8 expectation, I think, in trying to lay this out for  
9 folks is that they understand that, you know, nobody is  
10 going to get, you know, fixed amounts depending upon  
11 the fact that they showed up and this is the company's  
12 results. It was, you know, a performance-based  
13 program. It isn't based upon, you know, the bottom  
14 line financial result, you know, like the old Ford  
15 program. This was a more performance-oriented  
16 incentive plan.

17 Q All right. So if you worked hard and  
18 did your job, you stood a better chance individually of  
19 getting a bonus under this plan, right?

20 A In fact, if you -- well, I don't know.  
21 Some people don't seem to work that hard, but they get  
22 their job done and they perform very well. So yeah,  
23 performance will assure you bonuses if -- if you're  
24 accomplishing the work objective.

25 Q Nobody said during this meeting or any

PAGE 109

109

1 other discussions you had in '99 that if you work a lot  
2 of overtime, your bonus might be jeopardized?

3 A No, I don't believe there was any  
4 discussion like that.

5 Q All right. During this meeting -- I  
6 don't mean literally during this meeting, but at the  
7 time of this meeting and in this period of '99 when  
8 these Ford salaried employees were coming on board ZF  
9 Batavia, did you think at some point that I don't think  
10 it's really likely in a couple of years we're going to  
11 be able to keep paying them overtime as Ford has?

12 A I'm sorry. Ask that question again.

13 Q Did you have some concerns with  
14 following Ford's overtime policy for salaried employees  
15 in '99?

16 A I think we -- I do recall some  
17 discussion around the rate of overtime pay because of  
18 the Ford rate structure and we didn't want to have two  
19 overtime pay rate policies, so I think there was a  
20 recognition that the rate of pay around the overtime  
21 policy would also apply to the new hire employees and  
22 perhaps was more lucrative than we could afford as a  
23 tier one supplier going into the future. So there was  
24 around all of these some conscious criteria to  
25 undertaking or futuring, if you will, about is this

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)



EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 110

110

1 going to jeopardize the long term competitiveness of  
2 the salaried workforce. And in any areas where we had  
3 that of any substance we came up with a different  
4 solution. So the Ford salaried employees came over at  
5 or better base pay. Their incentive plan package in  
6 dollar terms is the same as what the new hire ZF  
7 Batavia employees enjoy. Obviously the new hires have  
8 a lower rate of base pay, so their percentage may be  
9 higher, but the absolutes were the same, so I said  
10 that's okay, that's not going to hurt me long term.  
11 And the defined contribution to the 401(k) for the Ford  
12 transition employees was isolated to them.

13 So I tried to make sure -- we  
14 collectively tried to make sure that we had programs  
15 that were fair and equitable for the Ford transition  
16 employees going into the future and it didn't  
17 jeopardize our long term competitiveness and the  
18 business plan reflected and supported it. So I don't  
19 think there was any thought that, you know, these plans  
20 would, you know, quickly be changed or were  
21 fundamentally unsustainable in the long term, as we  
22 understood the business conditions at the time. I  
23 mean, there was -- in fact, I personally being part of  
24 this Ford transition group insured that we were going  
25 to fundamentally live up to these obligations.

PAGE 111

111

1 There was some concern among people  
2 that, you know, well, they'll just be -- you know, work  
3 for a couple of years and then because their base pay  
4 is a little be higher, they'll be fired. I mean, there  
5 were some issues about, you know, whether they were  
6 really going to be valued employees long term, and I  
7 consciously went out of my way and took decisions and  
8 continue to enforce that these programs are in place  
9 and whether you're a Ford transition employee or a new  
10 hire, whatever, you know, we treat everybody fairly and  
11 we have these underlying differences that are  
12 fundamentally pretty much transparent and you'll find  
13 that there's only a couple of elements to this program  
14 for Ford transition employees that don't apply to the  
15 workforce at large.

16 Q Which two are those?

17 A Well, the 401(k) defined contribution  
18 benefit for the Ford transition employees and then  
19 retirement grow-in are the two that come out as being,  
20 I think, the most important. And obviously we've  
21 maintained the difference in the salary -- underlying  
22 salary base pay structure.

23 Q You were saying a moment ago that --  
24 about employees at Ford had a concern whether or not  
25 they'd be valued once they joined ZF Batavia; is that

PAGE 112

112

1 what was reported to you?

2 A I wouldn't say a -- a concern. It was  
3 -- some people, you know, they've seen companies that  
4 got formed up and you wonder how the new management  
5 team is going to come in -- you know, many of the  
6 people -- in fact, I hadn't even moved to Cincinnati at  
7 the time of this presentation. I was still living in  
8 Michigan. And, you know, until you see the management  
9 team and really get comfortable with it, there's always  
10 a level of uncertainty about the future of the business  
11 and me as an individual, you know, how am I going to  
12 play out in this thing. So it was questions of that  
13 nature. But I don't -- you know, nobody said "Well,  
14 are you going to fire me in two years?" or, you know,  
15 are you going to do this or that. It wasn't anything  
16 that specific. It was just concerns about going from a  
17 company like Ford Motor Company to a joint venture that  
18 has stand-alone treasury and financing and whatnot. It  
19 doesn't have the deep pockets of Ford Motor Company.  
20 And there was just some concern, like I say, by some  
21 employees, others weren't necessarily concerned about  
22 it at all, thought it was a great opportunity, just as  
23 soon get out of the bureaucratic mess of the, you know,  
24 big blue label and get on to something that was a bit  
25 smaller and they had better control and influence on

PAGE 113

113

1 the -- on the results of the operations. So there was  
2 a gamut from both extremes.

3 Q For those employees that were  
4 concerned, you yourself assured them that they would,  
5 in fact, be valued employees once they came over to ZF  
6 Batavia?

7 A I didn't assure them that they would be  
8 valued employees. What I said is that we plan on  
9 treating them fairly, as we would any other salaried  
10 employee, and I am a Ford transition employee and I  
11 believe that the package we had crafted made the  
12 decision in the employee's mind a non-economic decision  
13 but rather a personal preference. Do I want to come to  
14 the new company and be a tier one supplier of new  
15 technology transmissions or I'd rather go back for  
16 family reasons, maybe they didn't want to move, I don't  
17 know. But my intention in crafting it was to make it  
18 an economically neutral circumstance at the point in  
19 time of the offers that employees couldn't say "Oh,  
20 well, I'm getting, you know, unfairly compensated  
21 through all this and, therefore, I don't want to take  
22 it" or did I have the expectation that I was going to  
23 offer a more lucrative program to attract them out of  
24 Ford because that would have been unsustainable in the  
25 long term. So it was crafted to be economically

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 114

114

1 neutral.

2 Q It was crafted to be economically

3 neutral and economically sustained?

4 A Yes.

5 Q And we haven't talked about this much,

6 but the future of this plant was -- with the joint

7 venture was the CVT transmission, right?

8 A Well you say the future, that was the

9 long term product offering, yes.

10 Q All right. And certainly you knew it

11 was important to the employees that they have

12 opportunities to be part of the CVT project, correct?

13 A I'm not sure if I understand the

14 question.

15 Q Well, when we're talking about -- did

16 you or anyone with either ZF Batavia or Ford tell these

17 salaried employees at the time that they'd be getting

18 in on the ground floor on the CVT?

19 A I don't know if it was worded exactly

20 like that, but there was clearly an indication that,

21 yeah, this is the beginnings of a new company with a

22 very exciting future.

23 Batavia was planned to be shut down by

24 Ford Motor Company in around about 2004. There

25 wouldn't have been a future in the factory and we

PAGE 115

115

1 offered the folks the excitement of an opportunity that

2 would continue, the ability for them to work, you know,

3 indefinitely in the current facility. I mean, there

4 was the real potential outcome that Ford was going to

5 shut the factory down and there wouldn't be employment

6 for anybody.

7 Q Right.

8 A So you got the ground floor of the new

9 management team, new ownership, if you will, that was

10 the joint venture.

11 Q Were any assurances made in 1999 that

12 the Ford transition employees would get an opportunity,

13 like all other ZF employees, to be a part of the CVT

14 transmission production?

15 A You seem to be making a distinction

16 between CVT and, I guess, the existing CD4E product. I

17 don't remember any discussions about saying Ford

18 employees would specifically be entitled to this and

19 not that or anything else. It was a team and trying to

20 build a team and saying yeah, the opportunity is here

21 for everybody.

22 Q It was -- I'm just basing it on some of

23 the things that you said about some of the concerns

24 that employees raised. Were there assurances made to

25 these transition employees that they, in fact, would

PAGE 116

116

1 have the same opportunities to be promoted, to move up

2 in the company at ZF Batavia just like every other ZF

3 Batavia employee that was hired outside of Ford?

4 A Well, you keep using the word -- I

5 don't think there was any assurances made, but some of

6 the Ford transition employees were, in fact, promoted

7 to join the company, to fill the key positions, and

8 some have continued to get promoted and, to my

9 knowledge, there's no conscious decision on anybody's

10 part that says well, this employee is different than

11 this because that's Ford heritage or ZF heritage.

12 There's -- there isn't any of that taking place. It's

13 based upon people's individual competence and being

14 able to work in teams and those who do well are

15 entitled to promotional opportunities and those who

16 don't, don't get promotional opportunities is the best

17 I can characterize it.

18 Q Has Mr. Adams ever commented that he

19 wanted to get the Ford influence off the floor?

20 A The Ford influence off the floor?

21 Q Off the floor.

22 A I don't think I've ever heard him

23 characterize it that way. There was a clear

24 acknowledgment by both Ford and ZF, as represented by

25 the fact that Ford was planning on shutting the factory

PAGE 117

117

1 down and when Batavia lost the -- the FN transmission

2 opportunity in late probably '96, '97, they couldn't

3 come to a working pattern agreement with the --

4 primarily the hourly employees in the factory, that

5 there's just no -- there's no future for this factory

6 down the road. And it was further evidenced by, you

7 know, the Harburg (phonetic) competitive data studies

8 that we disclosed to ZF that said this is the worst-

9 performing transmission plant in the Ford system and

10 one of the worst in North America and this is going to

11 have to be worked on to make it, you know, competitive

12 in the long term.

13 So there was acknowledgment that for

14 whatever reason -- you know, it's not that it's Ford,

15 it's certainly not in the water, but it was recognized

16 that this factory had some fundamental productivity

17 issues that were going to have to be overcome over

18 time. And, you know, you can say that clearly

19 management recognized that we need to change the

20 culture in the factory, and you don't change culture by

21 just, you know, cleaning house and bringing all new

22 people in. That's not the way you get there. You need

23 to move the facility forward and change the culture

24 that creates an atmosphere that is, in fact, better

25 than what -- you know, what it was.

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 118

118

1 Q When was it that were you notified that  
2 this was the worst-performing plant?  
3 A Well, I knew it in my automatic  
4 transmission job back in '96-'97. Ford had five  
5 transmission plants and this one stood out continuously  
6 as being the least efficient of any of them for  
7 whatever reason. I mean, I can speculate that there  
8 were three or four primary reasons but --  
9 Q Let's see. Mr. Kehr, we've tried to  
10 this morning go through the process. We haven't hit  
11 all the details, I suppose, around the joint venture,  
12 but this process of offering packages of compensation  
13 and benefits to these salaried employees of Ford that  
14 joined ZF, are there any other -- are there any  
15 significant conversations that you recall among your  
16 management team or other people at Ford or with the  
17 various salaried employees that were making this  
18 decision that you haven't already testified to about?  
19 A Are you talking about in group settings  
20 or, I mean --  
21 Q Group or private.  
22 A Well, I mean, people came up to me in  
23 the hallway occasionally and I -- you know, I don't  
24 know 20, 25, I mean large numbers, individually with  
25 some specific questions here and there that I tried to

PAGE 119

119

1 the best of my ability to answer, you know, fairly.  
2 I'm sure Tony Deshaw probably fielded some and he and I  
3 fielded some together and sometimes people came to me  
4 and said we got this question, you know, how do you  
5 think -- you know, what's the right answer to it. So,  
6 yeah, I mean, it was 12 months and a lot of things  
7 happened. So, I mean, it's not to say that down the  
8 road somebody won't say well do you remember this, and  
9 maybe I'll recall it. So, I mean, to the best of my  
10 ability sitting here today, I believe I reasonably, to  
11 the best of my knowledge, articulated to you what I  
12 think occurred.  
13 Q And these communications you had with  
14 your team, I imagine you had a lot of e-mail  
15 communication back and forth putting this package  
16 together and receiving the responses from the salaried  
17 employees in '99?  
18 A No, I didn't receive responses from  
19 salaried employees  
20 Q Let me re-ask the question: I imagine  
21 you obviously had lots of verbal discussions with  
22 people. Did you have written communication as well by  
23 e-mail or otherwise in connection with putting this  
24 package together, offering it to the employees, et  
25 cetera?

PAGE 120

120

1 A Oh, I'm sure that there was some e-mail  
2 written around some of the programs. I can't  
3 specifically, you know, go back and think of any  
4 particularly important ones. And perhaps I got an e-  
5 mail or two from an employee with a question here and  
6 there, but anything that would have been communicated  
7 to the employees, you know, in mass, I think this is a  
8 key document, this is an important document. So I  
9 think this -- I mean, we were careful about we shared  
10 with employees until it was reasonably well understood  
11 because the last thing you want to do is get people  
12 confused with a moving target.  
13 So it was -- it was reasonably  
14 controlled in terms of what was communicated. That's  
15 why we had them write down their Q's and A's. People  
16 would review them before the answers went out. And who  
17 reviewed those changed over time obviously during the  
18 12-month period that was involved.  
19 Q You wanted to give out accurate  
20 information, right?  
21 A Yeah, as best we could. That was  
22 really our objective.  
23 Q And were you at all times honest and  
24 forthright about this package that was offered to the  
25 ZF --

PAGE 121

121

1 A Yes, sir.  
2 Q -- to these employees? And you  
3 certainly expected the employees, based on verbal  
4 representations that you and others made at meetings  
5 such as May 27th, '99, as well as Exhibit 2, the  
6 information contained in here, based on all that  
7 information, you expected the employees to make a  
8 decision based on the information that you gave out  
9 verbally and in writing?  
10 A Yeah. Primarily the in-writing stuff,  
11 I think, would have been obviously more important than  
12 the presentations. Those are -- as I recall, we  
13 specifically did not want to distribute this, but  
14 rather share that with the employees in that this was  
15 what we felt would be appropriate to share at that  
16 point in time.  
17 Q And your expectations regarding the  
18 agreement that you entered into with ZF Batavia, did  
19 you expect that ZF Batavia would significantly change  
20 the package of compensation and benefits they had  
21 offered in '99, come 2000 or perhaps the next year in  
22 2001? What was your expectation?  
23 A My expectation was that the programs  
24 would evolve over time as appropriate given the  
25 business circumstance and this and that, but there was

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 122

122

1 no specific discussion about any particular element of  
2 it and how that may change over time, over a period of  
3 time. There was, I think, recognition that the  
4 overtime pay rate we probably would leave relatively --  
5 or leave it unchanged. But no, there was no conscious  
6 decisions or thoughts about any particular element of  
7 it, how it may change over time.

8 Q But in terms of your own compensation  
9 package, you expected in '99 that ZF Batavia would  
10 follow the promises it made about your own bonus plan  
11 in 2000, 2001?

12 A Well, yes, subject to business  
13 conditions.

14 Q All right. I mean, were you told that  
15 there was something on the horizon that would not  
16 permit ZF Batavia to meet these promises regarding  
17 bonus for your compensation?

18 A I'm not sure what you mean by promises.  
19 There was an annual incentive established. And every  
20 year we have to go propose to the board the objectives,  
21 and you're substantially at risk just because you've  
22 got a number written down and the board says "Well, we  
23 want you to be at 150 percent, you know, achievement of  
24 all of these."

25 So, no, there's no guarantees other

PAGE 123

123

1 than, yeah, there will be an annual incentive plan.  
2 The targeted pay-out is 75 percent, there is ranges. I  
3 had a number in my contract and it was subject to the  
4 performance of the company and the management team and  
5 individuals and all. The range of outcomes could vary  
6 significantly. I mean, there's a lot of risk  
7 associated with incentive plans. I mean, that's why  
8 they call them incentive plans, right?

9 Q In 1999 did you expect that ZF Batavia  
10 would be able to pay overtime for salaried employees at  
11 some future date?

12 A Well, there's the, I think, lifelong  
13 discussion that always goes on about the  
14 appropriateness of paying any salaried overtime. Many  
15 companies just don't pay it, period. Ford did. ZF  
16 does. And we decided that we would continue an  
17 overtime policy that allowed for the compensation for  
18 approved overtime.

19 Q Is it your testimony that in 1999 you  
20 had no idea that one, two, three years down the road  
21 that ZF Batavia could no longer afford to pay the  
22 salaried employees overtime compensation?

23 A We still do pay salaried overtime  
24 compensation. I'm unclear on your question. It makes  
25 it sound like we're not paying it. We're paying it.

PAGE 124

124

1 Q Is your testimony that in the last  
2 couple of years ZF Batavia management has not -- has  
3 reported to salaried employees that they may not get  
4 paid overtime in the future?

5 A We had a circumstance that the  
6 overtime, salaried overtime and hourly overtime, in  
7 2000 was unsustainable. The business could not support  
8 the rate of overtime. It was higher than historical  
9 levels and in my assessment and many of the management  
10 team it was out of control.

11 The policy frankly may not have been  
12 followed in terms of the preapproval and the aspect of  
13 having some level of uncompensated casual time,  
14 whatever you want to call it. And we looked at the  
15 numbers and said we've got so much budget and we need  
16 to manage the overtime, like material costs and any  
17 other costs. We need to manage it to the budgeted  
18 levels.

19 Q This is a conversation that management  
20 had in 2000?

21 A No. That would have been later. I'm  
22 thinking 2000, maybe as early as 2001 when we looked at  
23 the 2000 actual overtimes vis a vis the budget levels  
24 and we said "Look, we've got this huge disconnect. You  
25 guys are going to run out of overtime money if you're

PAGE 125

125

1 going to spend at these historically high levels. And  
2 let's go as a management team, sort out the overtime  
3 that we're going to pre-approve and how can we manage  
4 to get people to charge less overtime."

5 And frankly there was a fair amount of  
6 discussion about why are we making people work so many  
7 hours? What's going on? This isn't sustainable, you  
8 know, in terms of people's lives, let alone  
9 financially. So there was a whole discussion about the  
10 rate of overtime spinning all out of control. Now,  
11 what are we going to do to get it back in the bag?

12 Q Did ZF Batavia at any time make a  
13 change in their policy regarding payment of overtime to  
14 salaried employees?

15 A Like I said, we started off using the  
16 Ford plan and then we did establish a policy, it was in  
17 strategy committee with selected senior folks that went  
18 through and continue to work through, you know, a gamut  
19 of employee policies and procedures, to which the  
20 overtime did come into that discussion and it was  
21 agreed that, you know, we'd fundamentally continue  
22 Ford's casual overtime program and I think we defined  
23 it as being, you know, up to nine hours a day. It had  
24 to be pre-approved. And I don't know, I haven't gone  
25 back and read the overtime policy in detail, so I don't

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)



EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 126

126

1 think it's fundamentally changed from the Ford program.  
2 I think maybe the -- the robustness about which that  
3 policy was enforced on the shop floor may have changed  
4 somewhat.

5 MR. VANWAY: Steve, where are we in  
6 terms of --

7 MR. SIMON: As soon as I'm done with  
8 this line of questioning, then we'll take a  
9 break.

10 BY MR. SIMON:

11 Q Was there a meeting held or a series of  
12 meetings held last year, in 2002, with members of the  
13 HR department and salaried employees where they were  
14 told that you were going to continue to work overtime,  
15 but you won't be paid for it?

16 A I don't recall such meetings.  
17 Certainly not that I participated in.

18 Q All right. So as you sit here today,  
19 it's your understanding, and maybe you're unsure of  
20 some of the details, but for salaried employees that  
21 work in excess of nine hours and it's authorized, you  
22 understood that they would paid overtime in connection  
23 with the rates that we've talked about before?

24 A Yeah. If it's pre-approved and it's  
25 consistent with the overtime policy, yeah, I would have

PAGE 127

127

1 expected it would have been paid.

2 Now, there may have been some short  
3 window when we had some difficulties with the overtime  
4 budget and we were trying to manage to the budget and  
5 some folks may have kind of run out of overtime budget  
6 and, therefore, weren't authorized to provide any more  
7 budget and, therefore, shouldn't have been pre-  
8 approving any overtime because they don't have any  
9 budget and it came to a very difficult circumstance for  
10 a relatively short window. And in essence we finally  
11 got in my judgement, being the CFO, operation  
12 management attention that said "Oh, we're serious about  
13 this. We're not just going to do business as we always  
14 have and run these exorbitant overtime rates. And we  
15 agreed to provide another million dollars, if I recall,  
16 or something to that magnitude that would allow us to  
17 find a middle ground between historical unacceptable  
18 rates and much more aggressive rates that we had  
19 established in the budget and we found a middle ground  
20 and we got on with life.

21 Q Would it surprise you if salaried  
22 employees reported to you that they've worked lots of  
23 overtime hours that they've not been paid overtime?

24 A Yeah. I've got people in my group  
25 that, subject to the overtime policy, it's not pre-

PAGE 128

128

1 approved and they work 60 hours a week. I only pay  
2 salaried overtime in my area where I directly, you  
3 know, control it for pre-approved, you know, special --  
4 special reasons. And other parts of the factory --  
5 obviously, you know, when you get down to shop floor,  
6 it becomes a little bit different. But when I sit up  
7 there and look at numbers and it says we're only making  
8 80 percent of the parts day in and day out that this  
9 equipment is capable of making, why don't we make 100  
10 percent of the parts that it's capable of making in  
11 five days and don't do overtime. So I tell my people  
12 "Get your work done and you don't have to work casual  
13 overtime."

14 So it's not like we, you know, tie  
15 people to their desks that work 45 hours or 50 hours or  
16 60 hours. The expectation is people are going to work,  
17 you know, 45 hours or better without being compensated  
18 for overtime.

19 Q But if they work beyond that, the  
20 policy is to compensate them?

21 A No, no. It has to be approved. And  
22 you say "Well, why are you working Saturday, John or  
23 Sally?" "Well, I didn't get my work done. You know,  
24 you gave me this assignment." Well, sorry, you're a  
25 salaried employee, you ought to come in and get your

PAGE 129

129

1 work done because you could have gotten it done, in my  
2 assessment as a manager. You could have achieved your  
3 work product in the time, within the 45-hour window,  
4 let's say, so you're not going to get paid, but I  
5 expect the job to get done. I mean, that's simple  
6 management, right?

7 Q Now, you're saying -- is it a different  
8 calculation on the plant floor?

9 A No. The assessment is different on the  
10 shop floor. I mean, it's more difficult when you're  
11 scheduling production lines. "Well, why do we have to  
12 schedule the production line for Saturday?" "Oh, we  
13 had a machine break down on Tuesday and, therefore,  
14 they couldn't make their parts." "Oh, okay. Well,  
15 that's probably more justified than other cases," and,  
16 you know, went down to the group leader level, the  
17 manager level, circumstances related to why it was  
18 required and not required, and all that stuff has to be  
19 sorted out and in the judgement of management dealt  
20 with fairly consistent with the overtime policy.

21 So to the extent you're saying that  
22 some people worked overtime -- worked in the factory  
23 and weren't paid for it doesn't surprise me at all  
24 because frankly some of it probably wasn't justified to  
25 be paid, and that's what the policy allows for.

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)



PAGE 130

130

1 Q All right. So you're saying the policy  
2 regarding overtime didn't change, but the enforcement  
3 of whether somebody actually worked authorized  
4 overtime, that was changed?

5 A People started asking the appropriate  
6 questions as to why are we going to -- you know, why  
7 should I pre-approve this overtime. It's like anything  
8 else, right? I mean, you've got travel expenses. You  
9 only have so much travel budget. Then somebody comes  
10 in and says "I want to take a trip." "Well, why?  
11 Can't you do it else way?" So it's all those  
12 questions.

13 They started asking, I think, better  
14 questions and started getting, you know, in my  
15 assessment, to the right balance between, you know, is  
16 it really a performance issue or is it justified, not  
17 just blanket statement, "Oh, it's over nine hours,  
18 therefore, blank, blank, blank," and just, you know,  
19 roll the money out the door.

20 MR. SIMON: Off the record. We're at a  
21 good time for a break.

(RECESS)

BY MR. SIMON:

24 Q All right. Mr. Kehr, we've taken a  
25 break, and you understand you're still under oath, sir?

PAGE 131

131

1 A Yes, sir.

2 Q We were talking about the overtime  
3 policy at ZF Batavia before the break and I want to ask  
4 at least a couple more questions about that.

5 The current ZF Batavia policy for  
6 salaried employees, is a salaried employee paid  
7 overtime if his supervisor requires him to work beyond  
8 the nine hours?

9 A If it's pre-approved overtime, yeah, I  
10 believe the policy says they get paid for it.

11 Q Well, are you saying -- is there a  
12 situation where the supervisor says "You're going to  
13 stay here an additional three or four hours on the  
14 floor," the employee works that extra time, is there a  
15 situation that you can identify for me where that  
16 employee doesn't get paid the overtime?

17 A Not specifically, no, but I would  
18 imagine that occurs.

19 Q What's that?

20 A Not specifically, but I would imagine  
21 that that occurs.

22 Q It occurs that in those situations  
23 where a supervisor tells a salaried employee "You're  
24 going to stay here and work extra hours but not get  
25 paid overtime," you're saying that situation occurs?

PAGE 132

132

1 A Well, maybe we're bordering on  
2 speculation here, but if an employee in my area, for  
3 instance, in the finance group needs to have a schedule  
4 done to support a meeting the following day and in the  
5 judgement of the supervisor the schedule should have  
6 been completed and it is not completed and they've got  
7 to work all night frankly to get the schedule  
8 completed, an extreme circumstance, I could -- yeah,  
9 they wouldn't necessarily get paid overtime.

10 Q And that same thing could occur on the  
11 plant floor?

12 A Yeah. For obviously different reasons,  
13 but yeah.

14 Q What if the supervisor tells a salaried  
15 employee "You're going to work weekends without  
16 overtime pay," is that consistent with ZF Batavia's  
17 policy on overtime?

18 A Yeah, depending upon the circumstance.  
19 In finance, where I have specific knowledge, we have  
20 salaried employees who work weekends and do not get  
21 paid. We also have some who work weekends and do get  
22 paid. It depends upon the case.

23 Q Are you aware of any announcement or  
24 communication to salaried employees last year that  
25 "From here on out you're going to work weekends and

PAGE 133

133

1 you're not going to get paid overtime"?

2 A Not that I recall.

3 Q Okay. So since -- at some point, and I  
4 don't know if we've identified the year, ZF Batavia  
5 started enforcing its overtime policy differently in  
6 terms of whether overtime was authorized or not; is  
7 that right?

8 A I wouldn't say we're enforcing it  
9 differently. There was a heightened awareness that we  
10 needed to manage overtime using the policy to the  
11 budgeted levels.

12 Q And when did that occur?

13 A I'm thinking that was in early 2001.

14 Q Were there any changes in the overtime  
15 policy whatsoever, including the enforcement of the  
16 policy, in 2002?

17 A Not that I recall.

18 Q Do you know of any reason why salaried  
19 employees at ZF Batavia in 2002 would become concerned  
20 that they were going to be required to work overtime  
21 hours without being paid overtime?

22 A I don't know specifically about the  
23 overtime. I do know that we have to launch 600,000  
24 units of new transmissions starting this year, next  
25 year and the year after, and there's going to be a lot

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 134

134

1 of work to be done in this time frame and that there's  
2 going to be strains on people, whether they're being  
3 paid or not being paid. You know, it's just a very  
4 difficult circumstance when you're trying to accomplish  
5 what we're trying to accomplish. But not in the  
6 context of whether people are or aren't going to get  
7 paid overtime on any kind of a broad brush, you know,  
8 policy circumstance, not that I'm aware of.

9 Q Okay. Just because my question was  
10 kind of long and your answer was kind of long, I might  
11 just pinpoint a little bit on that, on this subject.

12 There was no -- to the extent you're  
13 aware, there was no reason why any salaried employee  
14 would believe that the overtime policy for salaried  
15 employees changed in any significant way in 2002?

16 A Not that I'm aware of.

17 Q And I take it if there was some  
18 significant change in overtime policy, you would be  
19 made aware?

20 A I would think I would be aware of it.

21 Q It would come as a surprise to you if  
22 there was some significant change in the overtime  
23 policy that you weren't made aware of; is that fair?

24 A Yes.

25 Q Backing up a second to 1999, this joint

PAGE 135

135

1 venture was -- based on what I understand, you were  
2 combining the history and ability of Ford Motor Company  
3 to mass produce transmissions along with ZF's  
4 engineering capability regarding transmissions? That's  
5 probably not a very -- is that accurate in any way?

6 A Well, yeah. Ford has an existing high  
7 volume manufacturing plant at the time, in '99, '98,  
8 and ZF also produces automatic transmissions in high  
9 volume in Germany. What was particularly interesting  
10 to Ford in the joint venture was the CVT transmission  
11 technology that ZF contributed to the joint venture so  
12 that we could produce the CVTs in high volume using the  
13 existing facility infrastructure.

14 Q All right. Well, why was it important,  
15 if at all, to have these Ford salaried employees that  
16 were already at the Batavia plant in '99 to join the  
17 joint venture?

18 A Well, ZF would have preferred that all  
19 the employees change employment from Ford to the joint  
20 venture. In fact, I believe it's German law that with  
21 such a transaction it's required by law that the  
22 employees change. So the folks I was dealing with were  
23 a little bit surprised that there was the wide gamut of  
24 potential outcomes as it related to the workforce. And  
25 ZF's business model around the world is to have their

PAGE 136

136

1 salaried employees and, to the extent possible, the  
2 hourly obviously be on the payroll of the joint venture  
3 company. ZF doesn't believe in centralized payroll and  
4 infrastructure like Ford does. They're very P & L  
5 oriented and operation by operation being P & L  
6 centers, so they like to have their employees with a  
7 vested interest as it relates to the outcome of the  
8 location where they work.

9 Q Okay. So ZF wanted all the Ford -- any  
10 Ford employee that stayed in the plant to be a ZFB  
11 employee, ZF Batavia employee?

12 A Well, I wouldn't say it so strongly,  
13 but yeah, that was -- the intention is to continue with  
14 as much of the workforce that already existed as  
15 practically possible.

16 Q And, in fact, today there are numerous  
17 salaried and hourly employees in the plant that are  
18 still employees of Ford?

19 A That's not correct. I believe there's  
20 only one Ford salaried employee who still works in the  
21 factory, and he seconded from Ford under a leased  
22 employee, if you will. And then we have one ZF  
23 seconded employee. And there may be a handful of what  
24 they call division engineers from Ford that were in the  
25 factory under purchased service arrangement. But of

PAGE 137

137

1 the 300-odd salaried employees, just a small handful  
2 that fit into that category.

3 Now, the hourly employees are about  
4 three-fourths Ford and one-fourth ZF Batavia.

5 Q Why is it that the majority of the  
6 hourly employees are still Ford employees yet, as you  
7 say, only a small handful of the salaried employees are  
8 Ford?

9 A Well, the reason is we've never offered  
10 any of the Ford hourly employees the opportunity to  
11 work for ZF Batavia under a transition program. So the  
12 reason there's that many Ford employees in the factory  
13 is because we started with roughly probably 1100 Ford  
14 hourly employees and due to attrition, potential -- you  
15 know, a few transfers maybe to Sharonville, another  
16 Ford location, and for other reasons the absolute  
17 numbers have gone down over time, but not through any,  
18 you know, management course of action or whatnot or  
19 causing that number to be anything other than what it  
20 is.

21 Q Who is the one Ford salaried employee  
22 in the factory that you identified?

23 A Adam Vahratian.

24 Q How do you spell his last name?

25 A V-A-H-R-A-T-I-A-N. Now, he's one Ford

PAGE 138

138

1 salaried employee that's on the secondment agreement,  
 2 okay? The other ones -- and I'm not even sure how many  
 3 there are. I guess there may be five or six that are  
 4 there providing some engineering --  
 5 manufacturing/engineering support under a purchased  
 6 service agreement with Ford, which the joint venture  
 7 agreements, you know, allow for the joint venture to  
 8 purchase from either parent, if you will, necessary  
 9 services including, you know, people.

10 Q Does a man named Clyde LaJoye work  
 11 there?

12 A Clyde LaJoye is -- yes. He works in  
 13 the factory. He's not a ZF Batavia nor a Ford employee  
 14 to my knowledge.

15 Q Who's the employer?

16 A I'm not sure if he's self-employed or  
 17 if he works for an agency at this point, but he's  
 18 neither a ZF Batavia or a Ford employee.

19 Q What's his current position?

20 A I believe he's helping Dick Newark in  
 21 the manufacturing area.

22 Q Dick Newark is the plant manager?

23 A Yeah, operations manager, plant  
 24 manager.

25 Q In '99 the salaried employees were told

PAGE 139

139

1 that they couldn't -- for a period of time that they  
 2 couldn't transfer to Sharonville; is that right?

3 A I think they were told that they  
 4 couldn't transfer out of Batavia. I don't think it was  
 5 specifically limited to Sharonville, but transfers were  
 6 frozen for a period of time.

7 Q Do you know when that freeze was  
 8 lifted?

9 A No, I don't. It would have been  
 10 sometime in '99 I'm sure.

11 Q What were salaried employees told would  
 12 happen if they decided not to accept this package  
 13 offered to them by ZF Batavia?

14 A In what form or what setting?

15 Q Well, they're in the Batavia plant and  
 16 they're salaried employees, they're offered this  
 17 package to come on board ZF Batavia. What were they  
 18 told would happen if they didn't accept that package?

19 A I don't know if I was in any meetings  
 20 where that was necessarily articulated. My  
 21 understanding of what was in -- what the Ford employees  
 22 were informed is that they could accept offers from the  
 23 new company, that was encouraged obviously, and then  
 24 they would be -- those who did not accept offers would  
 25 be metered out of Batavia to either Sharonville or

PAGE 140

140

1 another Ford location as openings permitted, but there  
 2 was a period of time by which people needed to take a  
 3 decision and that they would not be able to work in  
 4 Batavia indefinitely.

5 Q All right.

6 A And the expectation, I think, that --  
 7 you know, that there would not be any layoffs or, you  
 8 know, reduction in force, they would make every  
 9 opportunity available for them to interview and get  
 10 reassigned within Ford.

11 Q Were they told that they could only  
 12 have two interviews?

13 A I thought it was three. They were  
 14 allowed three and they needed to take a decision, if I  
 15 recall.

16 Q When we're talking about interviews,  
 17 this is interviews with other Ford locations, right?

18 A I believe so, yes.

19 Q How did this three-interview process  
 20 work during the time that you could transfer out of  
 21 Batavia?

22 A I don't believe the interview process  
 23 began until later when the workforce circumstance,  
 24 those accepting offers, those not accepting offers,  
 25 until, I believe, we sized it up did we really begin to

PAGE 141

141

1 -- to lay out the details for that. And at that point  
 2 in time frankly those were Ford employees remaining  
 3 with Ford, and I was on with the joint venture, and  
 4 that to a large degree was handled by Ford, dealing  
 5 with their salaried employees, and my involvement was  
 6 more or less limited to ensuring that there was, in  
 7 fact, a process in place to ensure the interviews took  
 8 place and that we metered out people appropriately over  
 9 time so that we could ensure the operations would run  
 10 and we didn't have a mass exodus in a given month and  
 11 that we could hire new people in and train them  
 12 satisfactorily to replace these, you know, skilled  
 13 salaried employees.

14 Q Were people made any -- these salaried  
 15 employees, were they made any promises or were any  
 16 statements made to the effect that they could always  
 17 return back to Ford if they hired on with ZF Batavia?

18 A Those questions were probably asked and  
 19 I believe we basically stated that wasn't, you know,  
 20 the intentions of the transition program, that once you  
 21 came to ZF Batavia the expectation is that you would  
 22 not necessarily go back to Ford. But, I mean, slavery  
 23 has been abolished, so people can do what they want  
 24 over time and perhaps some have gone back to Ford that  
 25 I may or may not be aware of.

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 142

142

1 Q Do you know who Julie Hallere is?

2 A Yes.

3 Q H-A-L-L-E-R-E, I think.

4 A Yes.

5 Q Is she someone that was permitted to go

6 back to Ford after '99?

7 A Yes, I believe she did go back to Ford.

8 Q Was she given some sort of special

9 exception or was this just the policy about going back

10 to Ford?

11 A I'm not familiar with any of the

12 specifics around that circumstance.

13 Q Does ZF Batavia currently have a policy

14 about whether salaried employees can return to Ford?

15 A No, I don't believe we have a policy on

16 something like that.

17 Q I mean, if ZF Batavia salaried

18 employees are unhappy at ZF Batavia, are they free to

19 go back to Ford?

20 A Well, yeah, salaried employees are free

21 to go work for anybody they wish to go work for if they

22 can work out, I guess, what they find to be acceptable.

23 Q Has anyone from Ford intimidated to you

24 at any time since 1999 about whether they'll take back

25 salaried employees that wish to come back to Ford?

PAGE 143

143

1 A I don't know. I've never -- I've never

2 engaged in a discussion on that front.

3 Q Do you have an agreement that you're

4 permitted to go back to Ford if you choose?

5 A No.

6 Q In 1998 or 1999 did anyone, to your

7 knowledge, ever tell Ford salaried employees that they

8 were simply going to be able to be permitted to stay in

9 the Batavia plant and be Ford salaried employees

10 without having to make a choice about to join ZF

11 Batavia?

12 A I'm sorry. Did you ask if employees

13 were told if they could stay?

14 Q Yes.

15 A No. They were told just the opposite.

16 They could not stay indefinitely.

17 Q You remember you identified a 19 -- I

18 think it was a 1998 meeting that was a big announcement

19 where Jacques Nasser spoke, I think, through video

20 conferencing I assume or maybe he was there in person?

21 A It was video-conferenced into the

22 factory, but it was a press -- press announcement out

23 of Dearborn, Michigan.

24 Q Okay. And when was that?

25 A I believe it was October of '98.

PAGE 144

144

1 Q And when this was announced, even the

2 employees who were in the plant previously didn't know

3 about this joint venture; is that your understanding?

4 A There was an individual or two who knew

5 just weeks before the announcement that this joint

6 venture had been negotiated. And then there was a

7 whole communication strategy worked out with some folks

8 from ZF and Ford going to Batavia early in the morning

9 of the press announcement and they, I believe,

10 communicated to the then management team that there was

11 going to be this thing and blah, blah, blah. So they

12 were given very limited advance notice but were

13 informed prior to the press release.

14 Q Like within a couple of days or hours?

15 A No. I believe it was the morning of

16 the press release that the senior management became

17 aware.

18 Q I think you referenced an individual

19 who knew a couple of weeks before.

20 A Yes.

21 Q Who were you referring to?

22 A Mike Warden.

23 Q Okay. Do you know if anybody said in

24 that press conference, that meeting in 1998, that Ford

25 employees could simply stay at the plant?

PAGE 145

145

1 A There was an evolving circumstance

2 there. I was at the -- I'd say the negotiating table

3 representing Ford in the negotiations with ZF, and ZF

4 started out "Well, maybe we won't require that the

5 workforce -- the salaried workforce transitions. Maybe

6 they could remain Ford employees." And then -- and I'm

7 not sure when this evolved as it relates to that press

8 announcement. I was not in Batavia. I was, in fact,

9 at the TV station, if you will, in Dearborn. So there

10 was an evolving circumstance where it started out that

11 none of the salaried employees would necessarily need

12 to do anything and then it was the senior management

13 folks would need to be ZF Batavia employees. And then

14 ultimately by the time we wrapped up 1998, it was

15 determined that all of the salaried employees would

16 need to either change to the new company or be moved

17 out.

18 And it wasn't so much dealing with the

19 -- with the Ford salaried employees, but ZF and Ford

20 agreed that for the joint venture to be successful they

21 needed a ZF Batavia salaried workforce that has a

22 vested interest obviously in the success of the joint

23 venture. And the more Ford people that can come over,

24 that's great, and we'll supplement it with some other

25 obviously new hires and both parents sent in some --

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 146

146

1 sent in some highly-placed management folks to provide  
2 the correct leadership.

3 Q So it may have been at that '98 meeting  
4 the employees may have been told that you can stay with  
5 Ford and stay at the plant?

6 A It's possible.

7 Q Okay. And then later they were told  
8 that's not the case. You're going to have make a  
9 decision about whether to join ZF Batavia if you want  
10 to stay in the plant?

11 A Yes, I think that's correct.

12 Q In '99 did anyone, to your knowledge,  
13 make a statement to one or more of the Ford salaried  
14 employees that they'd have Ford on the board of  
15 directors who would be looking out for their interests  
16 once they joined ZF Batavia?

17 A I'm not sure if it was communicated at  
18 a board of directors level because the board of  
19 directors for the joint venture has fiduciary  
20 responsibility to the joint venture and don't  
21 necessarily represent the parent companies' interests.  
22 But I think -- notwithstanding that difference with the  
23 board, I think Ford labor relations or Ford human  
24 resources did make some assurances to the Ford salaried  
25 employees that they would watch after them in terms of

PAGE 147

147

1 their performance reviews and merit increases as long  
2 as they remained Ford employees and would not forget  
3 about them in Batavia and would find employment  
4 opportunities elsewhere within Ford. But Ford didn't  
5 make any assurance as to what would necessarily occur  
6 with the employees who changed over to the joint  
7 venture.

8 Q So if someone told you that, in fact,  
9 people had told the salaried employees that even once  
10 you go to ZF Batavia, Ford is going to look for you,  
11 that would be news to you?

12 A That would be news to me.

13 Q Okay. And that also would be  
14 incorrect?

15 A Yeah. Well, it would be inappropriate  
16 for the Ford people to say that they're going to look  
17 out for the Ford employees who make the transition  
18 program. So both inappropriate and, to my knowledge,  
19 no assurances or discussions around that were -- were  
20 ever made. I mean, I personally took on an obligation,  
21 being a Ford transition employee and putting this  
22 package together in place, to make sure that we  
23 continued to treat the Ford transition employees fairly  
24 and that the programs as we fundamentally laid out  
25 would continue and whatnot, subject to the business

PAGE 148

148

1 conditions and all. So -- and I'm actually quite,  
2 quite proud of the way the program laid out and what  
3 we've accomplished with it.

4 Q If somebody from Ford management or ZF  
5 Batavia management said to the Ford salaried employees  
6 in '99 that people at Ford are going to continue to  
7 look out for you even after you're with ZF Batavia,  
8 that statement indeed would have been false, right?

9 A Well, it didn't occur to my mind -- to  
10 my knowledge, and yeah, I think it would have been --  
11 was false, inappropriate. I don't know what the right  
12 term is.

13 But I guess now that you mention it,  
14 there is one exception. Clearly Ford has an ongoing  
15 responsibility as it relates to the retirement and  
16 post-retirement medical associated with the transition  
17 employees because that is a continuing Ford obligation  
18 to these employees under the stipulation stated.

19 Q But other than that issue with the  
20 benefits, it would not be a true statement for someone  
21 to say that Ford is going to continue to look out for  
22 you even after you join ZF Batavia, other than the  
23 benefit issue you've identified?

24 A You got me with a couple of double  
25 negative there.

PAGE 149

149

1 Q Well, I'll re-ask the question. You've  
2 identified that the benefit issue is an obligation that  
3 Ford was going to continue to have to oversee even  
4 after somebody joined ZF, right?

5 A Correct.

6 Q Other than that, though, there was no  
7 basis for anyone to tell salaried employees that Ford  
8 is going to look out for you after you join ZF Batavia?

9 A Yeah, I think that's correct. There's  
10 no basis for that statement. I mean, obviously Ford,  
11 with an equity position in the joint venture, wants to  
12 look out for the interest of the joint venture as it  
13 relates to all facets of the business, including the  
14 salaried employees, whether they be Ford or otherwise.

15 MR. SIMON: All right. Well, let's go  
16 through some more documents, Mr. Kehr,  
17 hopefully expeditiously. This is Exhibit 5.  
18 We'll try to keep that pile as neat as  
19 possible, but we'll see what happens. Exhibit  
20 5. It's a two-page document. I'll give you a  
21 chance to familiarize yourself with it, sir.

22 BY MR. SIMON:

23 Q Have you had a chance to take a look at  
24 that, sir?

25 A I'm almost halfway done.

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)



PAGE 150

150

1 Q Okay. Take your time.  
 2 A Okay.  
 3 Q Have you seen this document before?  
 4 A Well, yeah. It's from me. Yeah, it  
 5 looks familiar.  
 6 Q Okay. This is just -- you would agree  
 7 that this document reflects an e-mail exchange between  
 8 you and others in August of '99; that's right?  
 9 A Correct.  
 10 Q All right. The one e-mail in the  
 11 middle is August 12th, 1999 from you to Mr. Warden; is  
 12 that right?  
 13 A That's correct. Yeah.  
 14 Q What issue were you trying to address  
 15 with Mr. Warden in that e-mail?  
 16 A Well, I think as I mentioned earlier  
 17 today, the transition of the Ford employees back to  
 18 Ford or out of Batavia was subject to a fair amount of  
 19 discussion in terms of how would it be conducted. And  
 20 I was afraid that the good Ford employees that were  
 21 going to be leaving would be swept up very quickly and  
 22 we'd have a relatively large mass exodus in a period of  
 23 time and at a rate at which would fundamentally  
 24 jeopardize the operations of the business, so I think  
 25 what I was encouraging Mike to do here in the second

PAGE 151

151

1 paragraph is fill out the transition schedule and stick  
 2 to it. So that even if the good people -- and we can't  
 3 afford to let them go for seven months. They're still  
 4 available but not before seven months. And if we would  
 5 have allowed Ford Motor Company to pull out the people  
 6 they wanted as quickly as they wanted them necessarily,  
 7 we wouldn't have been able to sustain the business.  
 8 So I think that's fundamentally what  
 9 the question is addressing. And then there are a  
 10 couple of specifics about some folks who were on like a  
 11 special assignment, I guess, over at Sharonville or  
 12 someplace else that actually had not yet been processed  
 13 out of Batavia's payroll location code within Ford.  
 14 Q Your phrase that you use in your e-  
 15 mail, back-to-Ford employees, are you referring to  
 16 employees then who went to ZF Batavia and returned to  
 17 Ford?  
 18 A Oh, no. These are Ford salaried  
 19 employees who were not going to accept offers to join  
 20 the new company and, therefore, would be -- needed to  
 21 be transitioned back to Ford.  
 22 Q Okay. Even though you used the phrase  
 23 back-to-Ford, these are employees who have never left  
 24 Ford?  
 25 A That's correct.

PAGE 152

152

1 Q Okay.  
 2 A In this time frame. I'm not even sure  
 3 that anybody had even left Ford to begin with. They're  
 4 still on Ford payroll at this point in time. But this  
 5 is the window when we first, I believe, obtained the  
 6 opportunity to hire people onto the payroll of ZF  
 7 Batavia. But that notwithstanding, this without a  
 8 doubt in my mind deals only with the Ford salaried  
 9 employees who were going to have to go back to Ford at  
 10 sometime in the future because they were not going to  
 11 accept offers.  
 12 Q When the salaried employees accepted  
 13 employment with ZF Batavia, were they instantly put on  
 14 the ZF Batavia payroll or was there some sort of lag?  
 15 A We gave them the opportunity to  
 16 transition to the ZF Batavia payroll anytime from the  
 17 point of their offer to December 31st, 1999. That was  
 18 the window.  
 19 Q After December 31st, 1999 to the  
 20 present has Ford contributed in any way to the payment  
 21 of salaries for these transitional ZF Batavia  
 22 employees?  
 23 A What do you mean by the salaries of the  
 24 --  
 25 Q Well, is -- all right. Is Ford --

PAGE 153

153

1 A Maybe what you could do is -- you could  
 2 help me out. If you refer to them as Ford transition  
 3 employees, that means they're --  
 4 Q Okay. That's fine. I knew when it  
 5 came out, I didn't like how it sounded. I'll refer to  
 6 them as Ford transitionals. That's what they're  
 7 referred to in the plant, aren't they?  
 8 A Yes.  
 9 Q Okay. When the Ford transitional  
 10 employees came to ZF Batavia, has Ford in any way  
 11 contributed monetarily to the payment of their  
 12 salaries, either directly or reimbursing ZF Batavia for  
 13 the payment of the salaries?  
 14 A Well, the terms of the joint venture  
 15 agreement allows for cost-plus -- cost-plus pricing on  
 16 the current transmissions we manufacture, so subject to  
 17 the joint venture agreement -- I mean, fundamentally  
 18 Ford is paying for all of the costs of all the  
 19 employees and depreciation, all the costs associated  
 20 with manufacturing CD4E transmissions, but they're  
 21 paying for that through the price of the transmission  
 22 and is not fundamentally related to any single  
 23 individual or cost element.  
 24 Q When you say Ford is paying all the  
 25 costs, that would include the labor cost?

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 154

154

1 A Yeah. Labor, material, depreciation.  
 2 Q In talking about this e-mail you were  
 3 saying, I think -- correct me if I'm wrong -- that you  
 4 were concerned that a lot of the Ford salaried  
 5 employees would leave the Batavia plant and go  
 6 elsewhere and that would present a problem for you; is  
 7 that fair?  
 8 A Well, the expectation, they all would  
 9 eventually go back to Ford locations. The question was  
 10 at what rate and over what period of time was  
 11 sustainable in terms of hiring and training backfills.  
 12 Q What I was trying to ask was: Why was  
 13 it so important to keep these Ford salaried employees  
 14 working at the Batavia plant?  
 15 A Because Ford Motor Company needed  
 16 transmissions produced and shipped to their assembly  
 17 plants, and when you have 160 salaried employees and  
 18 around about 50 to 60 of them accept offers, you're  
 19 talking about 100 employees who did not accept offers,  
 20 so you're talking about over half the salaried  
 21 workforce will need to be transitioned out of Batavia  
 22 and back to Ford locations and that's a fairly  
 23 substantial number that has to be managed appropriately  
 24 or, you know, the business will suffer.  
 25 Q Why was it important at all to keep the

PAGE 155

155

1 Ford transitional employees in the plant as ZF Batavia  
 2 employees?  
 3 A Well, for -- for the same reason.  
 4 We're trying to continue to make CD4E transmissions and  
 5 Ford has got very competent manufacturing people in the  
 6 factory and for their skills and their competencies,  
 7 they're familiar with the transmission. I mean, for  
 8 all the obvious reasons you'd like to keep as much of  
 9 the existing workforce in place as possible, for the  
 10 continuity or whatever other reasons.  
 11 Q I asked that question poorly. But I  
 12 mean, the reason that you offered employment with ZF  
 13 Batavia to these Ford salaried employees is because  
 14 they had some value to the plant, right?  
 15 A Yes.  
 16 Q They had the experience with  
 17 transmissions, right?  
 18 A Well, they had functional competencies.  
 19 They may not necessarily know transmissions. Maybe  
 20 they know MP&L or material logistics. Yeah, they have  
 21 the ability to provide great assistance to the joint  
 22 venture.  
 23 Q And specifically would you say  
 24 producing the CD4E at that time?  
 25 A Well, that was the concern, was to

PAGE 156

156

1 maintain CD4E production both near term and to provide  
 2 the necessary resources and competencies long term so  
 3 the joint venture could be successful, including the  
 4 CVT business.  
 5 MR. SIMON: I'm going to hand you a set  
 6 of exhibits, Mr. Kehr, so we can look at those  
 7 jointly. It will be Exhibits 6, 7, and 8. Mr.  
 8 Kehr, I'm going to give you full opportunity,  
 9 to the extent you need it, to look at Exhibit  
 10 6, 7, 8, but I think you'll find that some of  
 11 the subject matter is similar in these  
 12 documents and you might be able to explain the  
 13 relationship of these three documents, so  
 14 that's why she'll introduce them to you  
 15 jointly.  
 16 BY MR. SIMON:  
 17 Q So after you have enough time to look  
 18 at these three exhibits, my question will be if you can  
 19 explain what they are.  
 20 A Okay.  
 21 Q What are Exhibits 6, 7 and 8?  
 22 MR. HUNTER: How about we go one at a  
 23 time?  
 24 MR. SIMON: Well, the reason I asked it  
 25 that way is that they seem to be closely

PAGE 157

157

1 related. I'm not sure if one might be a draft  
 2 of the other. But I'll certainly take your  
 3 suggestion. We'll go one at a time.  
 4 BY MR. SIMON:  
 5 Q What is Exhibit 6, Mr. Kehr?  
 6 A Well, first of all, I haven't seen this  
 7 previously. It appears to me to be an internal Ford  
 8 document representing the status of the Ford salaried  
 9 transition program for the employees being metered out  
 10 of Batavia. That's what it appears to be. And that's  
 11 true for Exhibits 6, 7 and 8.  
 12 Q Do you know who the author of these  
 13 documents are?  
 14 A I have no idea.  
 15 Q And never seen them before today?  
 16 A That's correct, to my knowledge. I'm  
 17 not aware of having ever seen them.  
 18 Q Is there a reason that you thought it  
 19 was an internal Ford document as opposed to a ZF  
 20 Batavia document?  
 21 A Well, one statement says See ZF status  
 22 report. They certainly wouldn't have done that on an  
 23 internal ZF document. It's got the look of a Ford one-  
 24 pager.  
 25 Q And I understand that you don't know

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 158

158

1 who the author is. Would you care to --

2 A Well, they've got the contact name down

3 here. I guess I could guess, but I don't know.

4 Q Well, go ahead.

5 A I don't know.

6 Q Well, take a guess.

7 A I don't know.

8 Q Okay. Is it something that looks to be

9 produced by an HR department or --

10 A I think it's an internal Ford document,

11 that I don't know who produced it or necessarily for

12 what purpose.

13 Q Okay. Turning your attention to

14 Exhibit 7, that's the one that says transition plan at

15 the top. I understand you haven't seen this before,

16 but I just want to see if you agree with at least one

17 of the statements in here.

18 Under where it says background it says

19 in the second sentence \_At the onset, an agreement was

20 made to transition out the Ford salaried workforce over

21 a period of 2-3 years, with year-end 2002 as the target

22 date for completion.\_ Do you see that sentence there,

23 sir?

24 A Mm-hmm. Yes, I do.

25 Q Do you agree with that statement?

PAGE 159

159

1 A Yes.

2 Q All right. When was it decided, to

3 your knowledge, that Ford salaried employees would be

4 out of the plant by the end of 2002?

5 A I would say on or about the date of

6 this document, May 5th, 2000. Once we understood who

7 all was going to accept and, you know, some of the

8 terms in there, we've used those, critical positions,

9 and we set up the metering program that realistically

10 was going to take probably that length of time to

11 accommodate the transfer out of 100 employees.

12 Q All right. Were you concerned in 1999

13 that you'd have these ZF employees hired off the

14 street, if you will, to work for ZF Batavia as opposed

15 to the Ford transitional employees, that there might be

16 a gap, given the Ford salaried employees salary

17 history, between their salaries at ZF Batavia and these

18 employees who were hired off the street?

19 A There was anticipated to be a gap, yes.

20 Was it of great concern? Not particularly.

21 Q Were you interested in '99 in closing

22 the gap at some point?

23 A No.

24 Q Did you think that that would -- in

25 '99, and you obviously described the work you went into

PAGE 160

160

1 in preparing for the joint venture and the employees

2 coming over to ZF Batavia, were you concerned down the

3 road that you might have a Ford transitional employee

4 making a lot more than a ZF Batavia salaried employee

5 working in virtually the same job?

6 A No. It didn't particularly concern me

7 because frankly we've got some alternatives where -- or

8 scenarios where new hire people are making more than

9 the existing workforce because they're maybe in higher

10 levels of management so no. I was very comfortable

11 with the structure of the transition program vis a vis

12 the long term viability of the joint venture and I had

13 no concerns.

14 Q In '99 or since then, all the way up to

15 the current date, has anyone at ZF Batavia complained

16 that the Ford transitional employees make too much

17 money?

18 A No, not that I'm aware of.

19 Q All right. You're not aware of any

20 concern among anyone at ZF Batavia that Ford

21 transitional employees are making more money than a ZF

22 Batavia comparable salaried employee?

23 A Not that I'm aware of.

24 Q Okay. Regarding the AIP plan, Mr.

25 Kehr, is there in any way a separate calculation for ZF

PAGE 161

161

1 Batavia salaried employees versus Ford transitional

2 employees in terms of what bonus they're going to

3 receive under the annual incentive plan?

4 A Why don't you try that one one more

5 time, please?

6 Q When you're awarding bonuses under the

7 annual incentive plan, does it make any difference that

8 the salaried employee is a Ford transitional employee?

9 A No, I don't think the end result makes

10 any difference. There may be mechanical differences in

11 the way the -- the way the monies are calculated and

12 totaled, but at the end of the day, as I indicated

13 earlier, the anticipation is that the dollar amount

14 available to Ford transition or non-Ford-transition,

15 given the comparable salary band, would be the same

16 dollar amount that would then be adjusted for

17 individual performance and team contributions.

18 But the end result is, no, there is not

19 an inherit bias one way or another, if that's what

20 you're asking.

21 Q Has there been any significant change

22 in how ZF Batavia awards the bonus under the AIP since

23 the joint venture began in '99?

24 A In terms of the philosophy of paying

25 bonuses or the mechanics or the paychecks? I'm not

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 162

162

1 sure --

2 Q Well, were bonuses awarded for 2002,

3 this year?

4 A Yes. They were paid last Friday.

5 Q Okay. And generally speaking, how does

6 ZF Batavia determine what each salaried employee will

7 get under the plan?

8 A Well, the first step is to take the

9 annual incentive plan metrics that are approved by the

10 board and then we report to the board what the final

11 results are for the given calendar year, and then that

12 achievement then is weighed in against the total salary

13 cost of all of Batavia that calculates an available

14 amount of money. Let's just say it's a million

15 dollars. This level of company performance yields a

16 million dollars of available payout.

17 Then we go and we apply what we call,

18 let's say, a fair share to each and every employee by

19 department or what we call our directors and they get

20 the -- their share of the AIP dollar amount, to which

21 they go -- and depending upon which director you're

22 talking about, they may have a larger organization,

23 smaller organization. And then they go and they talk

24 to their supervisors, maybe cross-functional people,

25 and make assessments individual by individual on many

PAGE 163

163

1 criteria to determine whether they think that person

2 should get, let's say, their fair share which would be

3 what's indicated in that one exhibit, within that

4 range. Let's say it's \$5000 for an individual. They

5 can determine whether that should be uplifted a little

6 bit or taken down individual by individual. And then

7 as long as the total being paid out for their

8 department is no greater than the available money to be

9 paid out, then they're done. Then they submit that in

10 and then there's some reviews that take place by human

11 resources. I myself look at it, cursory, in terms of

12 the philosophies that I see the different directors

13 using in terms of what they're doing. Some make

14 greater distinctions amongst performance than others

15 depending upon you know, the way they go about it.

16 They prepare performance reviews. So that's basically

17 what happens.

18 Then it gets submitted and I approve

19 the payout and that's submitted. I may go back and

20 talk to some directors about things here and there. So

21 that's how the bulk of the workforce AIP comes

22 together. For the officers and the senior management

23 the board approves our annual incentive plan.

24 Q Let's see if I -- I appreciate that

25 answer. Let's see if I can try to summarize it. What

PAGE 164

164

1 you said is on the record, but let's see if I can try

2 to summarize it a little bit just to help my

3 understanding.

4 The first step in the process is to

5 determine how well the plant did as a whole; is that

6 fair?

7 A The company, yes.

8 Q Okay. And then from that it's

9 determined how much -- how large the bonus pool will

10 be?

11 A Correct.

12 Q And then from there what's the decision

13 on which department gets what portion of that pool?

14 A It's based upon the salaried payroll,

15 department by department. So if -- you've got X

16 numbers of GSR bands, okay, and the GSR band payout is

17 some percentage. You take your total salary cost for

18 that band within that department and you apply the math

19 across that, such that there's comparable dollar

20 figures provided and also percentages. I mean, when

21 you get into the game, it's always dollars or

22 percentages and sometimes, you know, you look at both.

23 So I'm not sure exactly 100 percent the

24 mechanics of how it's divvied up, but the expectation

25 is it's being done -- in my mind it's being done on the

PAGE 165

165

1 salaried payroll costs department by department,

2 adjusted for the number of bands and whatnot.

3 Q The amount of money from the pool that

4 goes to the different departments isn't based on the

5 department's performance, it's based on a formula in

6 terms of how much salary their employees make in that

7 department?

8 A Yeah, I think that's generally true.

9 There's one exception. When -- when we did the

10 calculations for, I believe, the 2002 payout, which

11 would have been for the 2001 calendar year, when we

12 had, as I indicated, this large overtime issue, we went

13 back and made adjustment not by individual but in total

14 against selected departments where we had substantial

15 overruns as it related to overtime budgets and didn't

16 have the commensurate productivity improvements and

17 whatnot. So there was an adjustment made that was

18 agreed by all the senior management people including

19 those affected that their organization -- they thought

20 that was appropriate, and we made those adjustments and

21 then sent out the AIP amount that was available for

22 payout, but the managers then determined, you know, how

23 they wanted to proportion that. I think the hold-back

24 was probably \$125,000 is what we withheld. I've kept

25 it accrued on the balance sheet and the expectation was

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 166

166

1 that if plant performance improved, that that money  
2 would be put back into or made available to the  
3 organizations where we withheld it.

4 Q Again, let me try to summarize that so  
5 I understand. Because certain salaried employees  
6 worked a lot of overtime in 2001, there was a decision  
7 to cut their bonuses under the annual incentive plan to  
8 reflect that?

9 A No, that's not it. We looked at  
10 organizations, departments and said this department  
11 overran their overtime budget by, let's say, 100  
12 percent and another department by 50 percent, so it was  
13 done at a department level. That represented a  
14 reduction to the total amount of the AIP payment  
15 available for that department. So let's say that  
16 department would have gotten \$200,000 had it not been  
17 for the overtime productivity disaster -- somewhere  
18 from \$200,000 to, let's say, \$150,000, and everybody  
19 got their fair share of the \$150,000 on the spreadsheet  
20 that was provided and then the directors had the  
21 responsibility to go down the list and make adjustments  
22 as they felt appropriate, individual by individual, as  
23 long as they didn't spend more than \$150,000.

24 Q All right. So, for instance, if the  
25 maintenance department had excessive overtime in your

PAGE 167

167

1 mind in 2001 you made an adjustment by reducing the  
2 pool of money that was available to the maintenance  
3 department to distribute bonuses under the AIP, right?

4 A I don't know if we distributed at the  
5 maintenance department level. I think it's at the  
6 operations level, to which maintenance is a subset.  
7 But I'm not sure exactly the level of detail that we  
8 segregate the amounts. I would have believed -- I  
9 would believe it's at the operation level.

10 Q Do you mean if employees in the --  
11 well, help me understand that. Did you look at  
12 individually whether there was excessive overtime in  
13 maintenance department versus production, for example?

14 A No, I personally did not, but let me  
15 see if I can try to explain it. Dick Newark is the  
16 operations manager. Maintenance works for him, MP&L  
17 works for him, various other organizations work for  
18 him. Dick Newark gets the AIP and he then determines  
19 how he wants to distribute it amongst his total --  
20 total organization, including maintenance and the other  
21 functions. But I can tell you that the total money --  
22 the total money being available to Dick Newark to  
23 disburse to his group was reduced as related to the  
24 2001 performance of operations in total, including both  
25 overtime, productivity, scrap, you know, you name it.

PAGE 168

168

1 It was a bad year and everybody at senior management  
2 level decided that something had to be done, so it was  
3 -- it was carved off a bit.

4 Q And your testimony is that the pool of  
5 money that was carved off a bit was in the neighborhood  
6 of \$120,000?

7 A In total for ZF Batavia. I can't say  
8 that that's the number that dealt specifically with  
9 operations.

10 Q But you refer to it as a hold-back,  
11 meaning that perhaps in subsequent years or in a  
12 different period of time that bonus pool might be  
13 returned to the operations area so that bonuses would  
14 be increased in coming years?

15 A Yes, that was exactly what was  
16 anticipated.

17 Q Did that happen?

18 A Some of it has gone back this past  
19 year. There's still some left over. And the way we  
20 requested operation management to communicate it is  
21 look, you know, speaking as the operations manager to  
22 his reports, is Look, you know, we had a bad year  
23 guys, gals. It didn't come in very well and there's  
24 less money available for us and -- but it's not gone  
25 forever. There's still some being held back. And if

PAGE 169

169

1 we can, in fact, improve the results, the money is  
2 still going to be available for payout but not this  
3 year. Perhaps in the future.

4 Q But some of that \$120,000 you're saying  
5 was returned for 2002 AIP plan bonuses?

6 A I believe we spent a little bit of the  
7 \$125,000 this past year. Some of it in the operations  
8 area and some elsewhere. I mean, operations, even 2002  
9 was a reasonably good year relative to 2001, but they  
10 still missed their jobs per hour productivity  
11 commitment by close to an hour an unit. So they're  
12 still not where they've committed they'd be, so we're  
13 patiently waiting for the continued improvements.

14 Q Just so I understand this, this hold-  
15 back of \$120,000, what ultimately did the excessive  
16 overtime play a factor in making that decision to hold  
17 that money back? Was that the driving force for  
18 holding back that sum?

19 A Well, I would say the lack of  
20 performance, you know, productivity, quality, on top of  
21 the variance in the overtime spent versus budget. I  
22 mean, it's one thing to say in anybody's judgment  
23 what's excessive. If we define excessive anything in  
24 excess of the budget, yeah, that was weighed in as  
25 well. So I think the overtime was clearly a factor.

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)



EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 170

170

1 Q Was there a determination at any level  
2 of ZF Batavia management that employees who worked a  
3 lot of overtime in 2001 were paid for that overtime,  
4 therefore, their AIP bonuses should be lowered  
5 correspondingly?  
6 A There was the connection between the  
7 variance to the overtime budget and the total pool of  
8 funds available. And then the conversation and the  
9 direction provided was as it relates to any given  
10 individual, overtime -- levels of overtime should be  
11 considered amongst the other factors. Are they good  
12 team players, whatnot, all the good things that you  
13 consider. And in some instances people had very high  
14 levels of overtime and didn't receive a reduction in  
15 the AIP amount. Other people, in management's opinion,  
16 worked a lot of overtime and it was unjustified,  
17 unwarranted, whatever you want to say, and they  
18 received anything from, you know, their fair-share  
19 amount on down to zero, depending upon in their mind  
20 the extent of the inappropriate overtime given the  
21 performance. And I can't really say that -- you know,  
22 you just can't look at overtime hours worked in a  
23 vacuum. You got to say, well, what was achieved? What  
24 was the performance? What was the outcome of the work  
25 effort, whether it was 40 hours or 80 hours? Does it

PAGE 171

171

1 make sense what we're talking about here? And,  
2 therefore, there was adjustments made individually with  
3 overtime as one of the factors considered, but it was  
4 primarily performance based.  
5 Q To your knowledge, was any of the money  
6 that was held back in the bonus pool for the reasons  
7 you've described -- was any of that money then  
8 distributed to other employees who received a higher  
9 bonus as a result?  
10 A In 2000 --  
11 Q The bonus for 2001?  
12 A No, it was held back.  
13 Q It's your testimony that no one who  
14 didn't work on the plant floor, for example, at ZF  
15 Batavia may have received a higher bonus because people  
16 on the floor had a lower bonus as a result of the  
17 reasons you've given?  
18 A Well, the way the bonus pool in its  
19 entirety is calculated, it's upon the results of the  
20 operations of Batavia, including both the shop floor,  
21 material costs which is purchasing's responsibility, so  
22 everybody has influence and that's why they're company-  
23 wide objectives. The fact that we missed the  
24 productivity, the quality wasn't where it needed to be,  
25 the costs were too high, the total AIP pool was, I

PAGE 172

172

1 believe, down year for year from 2000 levels by, I  
2 don't know, I'm speculating, probably 15 to 25 percent.  
3 So everybody in the factory got a  
4 reduced bonus versus the prior year because  
5 collectively we didn't perform as well to the  
6 objectives as perhaps we could have. So everybody got  
7 less. And specifically as it related to the areas  
8 where we thought least performed, overtime being one of  
9 the indications of variance to budget, there was  
10 additional monies -- you know, there was monies held  
11 back and set aside. That money was not redistributed  
12 amongst other locations.  
13 Q This is Exhibit 9. It's a one-page  
14 document, Mr. Kehr.  
15 A Okay.  
16 Q Have you ever seen Exhibit 9 before?  
17 A Yes.  
18 Q And what is that?  
19 A It looks like the percentage payouts as  
20 it related to the 2000 AIP award.  
21 Q To the which year? I'm sorry?  
22 A 2000. Yeah, 2000.  
23 Q Explain if you can then -- well, who  
24 authored this document; do you know?  
25 A I don't know. Don't recall. It would

PAGE 173

173

1 have been somebody in Batavia, if that's what you're  
2 asking, yes.  
3 Q Explain if you can where these  
4 different numbers come from.  
5 A Well, if you remember, going back to  
6 this other exhibit where we had the salary bands and  
7 the targeted payouts, this happens to be the Ford  
8 transitional employees, so the Ford transition  
9 employees would have received a three percent award,  
10 around about -- this is general terms, not individual  
11 specific, but rather this would be an indication of  
12 what the payouts would be. It would have been three  
13 percent, which happens to be a bit over the targeted  
14 level. 7.4 would have been the amount versus this  
15 range over here. And then for the Ford MR is 8.9. And  
16 then there is a similar schedule to this Ford salaried  
17 base bands, and as I indicated to you before, because  
18 the new hire employees have a lower base pay, they have  
19 a higher AIP award amount in percentage terms. So when  
20 you see the ZF at 3.4 percent, their salaries  
21 theoretically on average are somewhat lower than the  
22 Ford folks, so the 3.4 and the 3 derive approximately  
23 the same dollar payout. So that's telling people,  
24 depending upon whether you're Ford transition or ZF  
25 transition -- or ZF employee, what you -- what your

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 174

174

1 potential award could be if you looked at it on average  
2 by the bands.  
3 Q Well, who was this document prepared  
4 for; do you know?  
5 A No, I don't know what package or what  
6 -- what this was specifically provided for.  
7 Q Do you understand this may have been  
8 distributed to salaried employees?  
9 A Well, if not distributed, somehow made  
10 available.  
11 Q And so it's your explanation that you  
12 have the Ford transitionals with a lower percentage  
13 award for the ZF under each of the categories, AC, GSR  
14 and MR, and it's your testimony that the reason for  
15 that is because the Ford salaried employees' base pay  
16 was higher?  
17 A On average, okay, the Ford transitional  
18 salary structure is anywhere from 10 to 20 percent  
19 higher than is the ZF Batavia new hire. Now, like I  
20 said there's circumstances where that -- because of  
21 background or whatever, there are some ZF people that  
22 have comparable pay to the Ford people, let's say, for  
23 the same job, but on average our structure for new hire  
24 people is lower and, therefore, when you take the same  
25 or equivalent dollar amount and divide it by two

PAGE 175

175

1 different numbers, you get different percentages.  
2 Q Okay.  
3 A And this would indicate, if you look at  
4 it, roughly three points on three percent gives you  
5 about 10 to 12 percent difference between the salary  
6 structures of the two groups.  
7 Q So it's your testimony the purpose of  
8 these calculations is to ensure that the ZF Batavia new  
9 hires and the Ford transitionals' payout under the AIP  
10 award is roughly the same as long as other factors are  
11 met?  
12 A Yeah, comparable performance,  
13 comparable salary bands, you would have equal award  
14 dollars.  
15 Q We won't make this an exhibit. I'll  
16 just show it to you. I'm handing you what is ZF  
17 Batavia's answer that they filed in this case. And I  
18 know you all have copies, but here's another one.  
19 MR. HUNTER: This isn't going to be an  
20 exhibit?  
21 MR. SIMON: No. We won't make it an  
22 exhibit.  
23 BY MR. SIMON:  
24 Q If you could turn to -- and I won't  
25 have you review this whole document, Mr. Kehr, because

PAGE 176

176

1 quite honestly it may be a bit hard to comprehend  
2 without the complaint right next to it. And obviously  
3 you didn't prepare this document, correct?  
4 A That's correct.  
5 Q All right. Did you have a chance to  
6 review it before it was filed?  
7 A I don't believe so.  
8 Q Well, turning to page five of the  
9 answer, paragraph 26, do you see that paragraph?  
10 A Yes, I do.  
11 Q The first sentence that says With  
12 respect to the allegations in paragraph 26 of the  
13 complaint, ZFB admits that it is in the process of  
14 changing policies and procedures with respect to its  
15 salaried employees. Do you see that?  
16 A Yes.  
17 Q I'll just represent for the record that  
18 this was filed and served on or about July 22nd, 2002.  
19 So my question is: In July of 2002 is it a true  
20 statement that ZF Batavia was in the process of  
21 changing policies and procedures with respect to its  
22 salaried employees?  
23 A I don't know. This is a Ford Motor  
24 Company document so -- or is it? This is ours? Okay.  
25 Yeah, I mean, we are constantly in the process of

PAGE 177

177

1 changing, reviewing, modifying policies and it looks,  
2 as I read on here, that this apparently occurred in the  
3 time frame of the foreign trade zone designation.  
4 Q Are you aware of any other changes in  
5 2002 or perhaps in 2001 regarding sick leave, vacation  
6 pay or bereavement leave?  
7 A Yeah. We revised down the amount of  
8 sick and personal days from five to three.  
9 Q Are you aware of any changes in the  
10 bereavement leave policy?  
11 A I don't recall a change in the  
12 bereavement policy from the beginning of the joint  
13 venture. I do remember having discussions around the  
14 Ford bereavement policy, but no, I'm not familiar with  
15 any changes we may have made there, not to say that we  
16 couldn't have.  
17 Q Did you make any changes regarding the  
18 vacation in terms of the number of weeks an employee  
19 can get under ZF Batavia's policy?  
20 A Not that I'm aware of.  
21 Q Turning your attention to -- turning  
22 back to Exhibit 2, Mr. Kehr, that's the -- did you have  
23 a name, by the way, for Exhibit 2 that you referred to  
24 this? Did you refer to it as the brochure or --  
25 A Yeah. The Ford transition brochure.

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 178

178

1 Q Ford transition brochure, okay.  
2 Looking at Exhibit 2, which is identified the Ford  
3 transition brochure, do you see in the middle column on  
4 the second page where it references personal and sick  
5 days?

6 A Oh, at the very bottom. Yes, I do.

7 Q So you testified a moment ago that, I  
8 guess, the policy had been up until this change you've  
9 referenced that salaried employees were entitled to  
10 five sick days a year?

11 A I think they were entitled up to five  
12 days for things such as sickness or other personal  
13 matters, yeah. They were entitled to five days. They  
14 -- they could take up to five days.

15 Q And when was this change made regarding  
16 the three days?

17 A I don't know. I know we've  
18 subsequently revised it back up to five days. But what  
19 occurred that made the change -- because we don't  
20 change these things just, you know, willy-nilly. There  
21 was clear evidence that employees, salaried employees,  
22 were considering these five days as being sort of  
23 entitlements and there was evidence that people were  
24 actually scheduling them in advance, and management,  
25 much like the overtime policy, wasn't asking the right

PAGE 179

179

1 questions and addressing this in the manner that I and  
2 the policy strategy committee felt appropriate and we  
3 made the decision that if management isn't going to  
4 enforce the reasonableness of up to five days, then  
5 we're going to reduce the benefit from five to three  
6 days and reduce effectively -- unfortunately employees  
7 who weren't abusing the policy were also affected. But  
8 we made the hard decision that we needed also to send a  
9 message on this front, not unlike the overtime  
10 circumstance, abuses of the programs aren't going to be  
11 tolerated and, therefore, we legislated a reduction,  
12 sent the message. And since then management has, you  
13 know, gotten the attention and they're asking the right  
14 questions and we felt that the policy was back being  
15 controlled appropriately, so we relaxed the restriction  
16 and went back to five days. So it was an action taken  
17 by management given the circumstances around the  
18 perceived abuse of this policy.

19 Q Is the reason that you went back to  
20 five days for sick or personal leave because of this  
21 lawsuit?

22 A No. The lawsuit had nothing to do with  
23 it.

24 Q Were people -- is the reason that  
25 people were paid a bonus under the AIP plan for 2002

PAGE 180

180

1 where they weren't -- where they didn't receive a bonus  
2 in 2001, is that because of the lawsuit?

3 A To my knowledge, there's been no change  
4 in the operations of the factory or the policies or  
5 procedures that relate at all to this litigation.

6 Q And would that also include then  
7 performance evaluations of employees?

8 A I don't believe we've made any  
9 adjustments for operating procedure or policy changes  
10 whatsoever as it relates to this litigation.

11 Q Did you believe when you -- and I don't  
12 think we've pinpointed it, Mr. Kehr. I apologize if  
13 you said it. The change in the policy down to three  
14 days for sick and personal, that was when, 2001, 2002?

15 A I think it was probably in 2001, but I  
16 -- I don't recall exactly.

17 Q And were you concerned -- you, of  
18 course, were told this policy before it was -- change  
19 before it was announced to the group?

20 A Oh, I was a party to the discussion to  
21 change it from five to three.

22 Q And you discussed that with HR staff I  
23 imagine?

24 A Yeah, the policy and strategy  
25 committee.

PAGE 181

181

1 Q Who's that?

2 A It's primarily myself, Herb Huebner,  
3 Len Sennish, Ludger Reckmann. I'm not sure exactly who  
4 the official group is, but it's the folks who have the  
5 responsibility for some of the fiduciary aspects and  
6 monitoring hourly pension plans and 401(k) plans. We  
7 meet periodically and make sort of broad, high-level  
8 decisions around changes in these policies and that  
9 would have been discussed in that forum.

10 Q And it's called the policy and strategy  
11 committee?

12 A Yes.

13 Q And does it just concern labor  
14 relations?

15 A It's primarily -- well, it's primarily  
16 around personnel related. Labor relations has an  
17 hourly connotation.

18 Q Right. I understand. And have you  
19 always been a member of this committee --

20 A Yes.

21 Q -- since the joint venture started?  
22 You mentioned Lou -- who's the COO?

23 A Dr. Ludger Reckmann.

24 Q How do you spell his last name?

25 A R-E-C-K-M-A-N-N.

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 182

182

1 Q When did he come on board ZF Batavia?  
 2 A February of 2002.  
 3 REPORTER: Excuse me. What did you say  
 4 his first name was?  
 5 THE WITNESS: Ludger, L-U-D-G-E-R.  
 6 REPORTER: Okay. Thank you.  
 7 BY MR. SIMON:  
 8 Q Do they call him Lou?  
 9 A Yeah. Ludger.  
 10 Q Who held his position before February  
 11 of 2002?  
 12 A There was -- that position was created  
 13 at that point in time.  
 14 Q So currently Mr. Reckmann, you, Len  
 15 Sennish and Herb Huebner are on this policy and  
 16 strategy committee?  
 17 A Well, I would say we're the key  
 18 members of these types of discussion. I don't recall  
 19 exactly who is on the official roster, if you will.  
 20 Q How many more people are we talking  
 21 about?  
 22 A I wouldn't think there was more than  
 23 maybe another one or two.  
 24 Q Okay.  
 25 A I believe Ann Appleton may be on it.

PAGE 183

183

1 We try and get a cross-section of, you know, plant --  
 2 some diversity and whatnot so that we get everybody's  
 3 opinions. I think Herbert Moser may be on it as well,  
 4 in terms of the German influence.  
 5 Q All right. In your discussions with  
 6 the people you've identified on the policy and strategy  
 7 committee or anyone else, for that matter, did you or  
 8 anyone else raise a concern that this change from five  
 9 days to three days for personal or sick leave  
 10 contradicted the statement in Exhibit 2 regarding  
 11 personal or sick leave?  
 12 A Well, I don't think anybody  
 13 specifically associated it back to Exhibit 2 in terms  
 14 of being a change from what Exhibit 2 represented.  
 15 There was clearly a fair amount of discussion about the  
 16 ramifications it would have on not just the Ford  
 17 transition employees but also the other ZF salaried  
 18 employees, that you're taking away what some perceive  
 19 to be a very precious benefit and that this will have  
 20 -- I mean, if you want to send a message that you think  
 21 a program is being abused, knock it off from five to  
 22 three days. And there was discussion around, well, how  
 23 is the workforce going to react, how do we communicate  
 24 this change in the policy to all of the salaried  
 25 employees such that it's understood for what was

PAGE 184

184

1 intended and not viewed as being punitive to the  
 2 workforce at large, but rather a message that we're not  
 3 going to tolerate abuse of policies.  
 4 Q Did you think that Exhibit 2 contained  
 5 a set of promises from ZF Batavia to the Ford  
 6 transitional employees?  
 7 MR. HUNTER: Object. Asked and  
 8 answered a couple of times now. You can answer  
 9 it again if you want.  
 10 THE WITNESS: I mean -- no. This was a  
 11 point in time and it's subject to change. The  
 12 business conditions -- and, in fact, I think  
 13 some of the things we've actually improved  
 14 relative to this. I know we've done things for  
 15 books and stuff. So this is a point in time  
 16 that you evolve off of. And, yeah, it was a  
 17 take-away, but it had nothing to do with this  
 18 or any promises or assurance. That was just a  
 19 point in time.  
 20 BY MR. SIMON:  
 21 Q What things have you improved?  
 22 A Well, I know from the Ford program,  
 23 when we put it in place -- when we looked at the Ford  
 24 program -- well, tuition reimbursement, for instance.  
 25 I presume this reflects the latest. But we -- we upped

PAGE 185

185

1 the amount allowable for books under the tuition  
 2 reimbursement program. I can't think of any other one  
 3 specifically. I know we've -- we have maintained the  
 4 three percent gain-sharing contribution that frankly or  
 5 possibly you know, could have been looked at in this  
 6 time frame. So we've made very few modifications to  
 7 those programs.  
 8 Q When you made the change from five days  
 9 to three days of personal/sick leave, did you think you  
 10 were breaking an agreement that you had with the Ford  
 11 transitional employees?  
 12 A No. There was no agreement. In fact,  
 13 I keep going back, but the point is I felt and the  
 14 committee felt that employees, unfortunately some in  
 15 management, were abusing a program that was put in  
 16 place for all the good intentions and we're not going  
 17 to tolerate abuse. So we put it in place going from  
 18 five to three days to send a message that, you know,  
 19 people are expected to come to work when possible and  
 20 for all those good reasons. And that was why it was  
 21 undertaken was to send a message, make corrective  
 22 action so that people are doing the right things.  
 23 Q Did you think you were entitled as you  
 24 -- moving back to 1999 when these summaries that are  
 25 Exhibit 2 were presented to the Ford transitional



3/18/03

PAGE 186

186

1 employees, did you think at that time that ZF Batavia  
2 was entitled, should they desire, to modify all these  
3 different terms contained in Exhibit 2 starting in  
4 January of 2000?

5 A Well, I would say not only are they  
6 entitled, but they're obligated as a management team  
7 trying to run a business to review and make  
8 modifications as appropriate across the whole avenue of  
9 -- of spectrum, including this element.

10 And, in fact, if I go back and I look  
11 at the results in Batavia versus Ford, for instance,  
12 Ford has taken away substantial benefit packages and  
13 reductions to their salaried work force that we looked  
14 at, contemplated, and said the results of the  
15 operations in Batavia are not as bad as Ford is, so we  
16 will not go back and eliminate the 401(k) match. So  
17 Ford has done, in their financial predicament, far more  
18 Draconian cost reduction measures than we have taken in  
19 Batavia.

20 We felt it was appropriate to look at  
21 the overtime, the personal days off, and we put in a  
22 discretionary spending thing that said no more coffee  
23 and doughnuts in conference rooms and also we  
24 constantly look at the state of the business and say  
25 what corrections or what modifications need to occur.

PAGE 187

187

1 Q And you make those changes without  
2 regard to what's in Exhibit 2?

3 A That's correct. I mean, this thing is  
4 not even -- I mean, it's not on the wall anywhere, I  
5 can assure you that. And it's -- this only relates to  
6 the Ford transition employees, right?

7 Q Yeah.

8 A Which is a small set of the total,  
9 okay? And all of these programs except for these few  
10 retirement ones I mentioned, all the programs are the  
11 same across the entire workforce. And anytime you want  
12 to make changes, we talk about it and say what is the  
13 rationale, what are we trying send as the business  
14 message, why are we doing it? We don't just go off  
15 willy-nilly change things because we feel like we want  
16 to change them and we're not on any, you know, program  
17 that says we're going to slowly but surely reduce the  
18 value of all these programs. We react to competitive  
19 data and the state of the business and make corrective  
20 actions as appropriate.

21 Q Did you at any time tell the Ford  
22 transitional employees in 1999 that ZF Batavia  
23 management was going to make decisions regarding their  
24 compensation and benefits without regard to Exhibit 2?

25 A No. I'm sure we wouldn't have told

PAGE 188

188

1 them that, no.

2 Q Why not?

3 A Why wouldn't we --

4 Q Well, if I understood you correctly,  
5 you've made decisions since then, 2000, 2001, et  
6 cetera, you've made policy changes regarding personnel  
7 issues based on the business needs for ZF Batavia,  
8 right?

9 A Business, operational, financial.  
10 Yeah, all those reasons.

11 Q And I think you also said that you make  
12 those decisions without regard to what's in Exhibit 2.

13 A We take them in regard to the total  
14 wage and benefit programs as it relates to our entire  
15 salaried workforce and the changes that we make is  
16 unrelated to specifically what was in the Ford  
17 transition program because it's the same as it is for  
18 the rest of the salaried workforce. And as that  
19 evolves over time, we consciously know what our wage  
20 and benefit package is, and any changes we want to make  
21 we talk about and we understand the significance of  
22 those as it relates to the workforce. Where, for  
23 instance, if you go back and I believe the numbers are  
24 -- at this point in time these contribution rates, I  
25 think they were 92 -- I'm sorry, eight percent, in

PAGE 189

189

1 Exhibit 2, eight percent of the total cost of those  
2 medical programs, employees had to match eight percent,  
3 while we've seen 15, 17, 18 percent increases in  
4 medical care premiums. And the employees continue to  
5 pay eight percent of the total and the company pays 92  
6 percent. So the premiums have gone up related to the  
7 -- to the programs. I think we've even made some  
8 changes in the programs as it relates to prescription  
9 drugs and things because you can't sit there and sit  
10 idle, looking at 15 to 20 percent increases in a fairly  
11 sizeable cost of your business. Ford has done it,  
12 everybody's doing it.

13 So there are changes taking place  
14 continuously. But to answer your question, we do not  
15 sit in a meeting and say okay, let me see this page,  
16 what are we changing off this page. That does not  
17 occur. But in totality people understand where we are  
18 and what we're doing on an incremental year-to-year  
19 basis.

20 Q I understand that you don't have  
21 Exhibit 2 on a wall and you testified that you don't  
22 specifically refer to Exhibit 2. But just so I can  
23 further understand your testimony, for example, when  
24 you were you discussing the change from five days to  
25 three days for personal sick leave, no one in the

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)



PAGE 190

190

1 meeting said "Well, wait a minute. Can we do this  
2 because of what we promised in the summary we gave to  
3 the transitional employees in '99?"

4 A Well, yeah, because it wasn't promised.

5 Q All right.

6 A You keep going back to the promises and  
7 agreements. This was shown, and yes, we're very  
8 sensitive to the evolution of our programs over time as  
9 it relates to both the Ford transition and our other  
10 salaried people. So we are cognizant of what we're  
11 doing and we're justifying it and reacting to  
12 competitive -- and the environment we deal with.

13 Q All right. No one has said during  
14 those discussions about the change from five days to  
15 three days of leave that "Wait a minute. We shouldn't  
16 do this because we made these statements in Exhibit 2  
17 in '99"? Has anyone made that -- anyone make any  
18 comment like that at all?

19 A No. The comments are to quite the  
20 contrary, that we make this offer available to five  
21 days for all employees. We don't talk about Ford  
22 transition and ZF Batavia people in these discussions.  
23 It's our salaried workforce, okay? There is no  
24 distinctions being made. And the discussion was this  
25 is going to have implications on the salaried workforce

PAGE 191

191

1 morale and whatnot that we need to be sensitive to, but  
2 also, at the same time, is when you make benefit  
3 programs available to people, management also has the  
4 expectation that the employees are going to act  
5 reasonably and fair. And if employees are abusing it,  
6 then you have to go and say "Look, you know, a deal is  
7 a deal here, right? If you guys wouldn't abuse it, I'd  
8 give you five. You're abusing it, and I cut it to  
9 three. Okay. Now what do you want to do?"

10 Just like the overtime thing, right?  
11 There's only so much budget. And, in fact, people have  
12 changed. I've seen real improvement in the management  
13 around it, so we took it back to five. Just like the  
14 overtime. We took it to some arbitrary low number, got  
15 people's attention, negotiated a deal about what the  
16 right budget number ought to be for overtime. They had  
17 plans to go deliver it and we worked our way through  
18 the issue.

19 Q Did you think it was reasonable for the  
20 transitional employees in '99 to expect that the  
21 statements in Exhibit 2 might afford them some  
22 protection down the road while they're employed at ZF  
23 Batavia?

24 A Afford them some protection? I -- I  
25 don't -- I mean, to the extent that they're not going

PAGE 192

192

1 to change radically, quickly, yeah, there's probably  
2 some assurances there. But over time all policies and  
3 procedures are subject to revisions and subject to  
4 change and at least you know where you're starting from  
5 and over time, you know, there's a reasonable  
6 expectation of what range you could end up with, let's  
7 say, in 10 years depending upon the business results  
8 and whatnot. So I think it does provide some  
9 assurance. Guarantees, promises, clearly not.

10 Q I'm handing you what's marked as  
11 Exhibit 10. If you could just familiarize yourself  
12 with that document, I'll just ask a few questions, Mr.  
13 Kehr.

14 A Okay.

15 Q This exhibit is dated March 28th, 2002,  
16 signed by Mr. Sennish. He's your human resources  
17 director?

18 A Well, I think it's prepared by him.  
19 I'm not sure if he signed it.

20 Q I see. Prepared by him.

21 A But yes, he is the human resources  
22 director.

23 Q All right. Was this document  
24 distributed to all exempt salaried employees, to your  
25 knowledge?

PAGE 193

193

1 A Yes.

2 Q Okay. Did you approve of this before  
3 it was sent out?

4 A I believe I looked at an earlier -- a  
5 draft, yes.

6 Q I know you had a chance to review this  
7 document. Do the statements in Exhibit 10 appear to be  
8 accurate?

9 A Yes.

10 Q Okay. You testified about how overtime  
11 may be worked by certain salaried employees, but it  
12 will be paid only if that overtime was deemed necessary  
13 by management; is that a fair statement?

14 A Yes.

15 Q Okay. Would you say that Exhibit 10 is  
16 communicating the same thing that you said in your  
17 testimony?

18 A Well, yeah. I mean, if you just go  
19 through the paragraphs, it says that, you know, we were  
20 over budget extraordinary levels unjustified by the  
21 business performance, seeing how it actually  
22 deteriorated. Unacceptable operating patterns  
23 precipitated reexamination of the practices regarding  
24 the budget compliance. Yeah, I talked about all that.  
25 And, therefore, necessary to make fundamental -- ZF

3/18/03

PAGE 194

194

1 Batavia modifies existing policies and procedures to  
2 align compensation with its business results. And  
3 then, yeah, I went down to specify the -- I think I  
4 said that up to an hour around about nine hours of  
5 uncompensated time worked -- I should say it's  
6 compensated but not on overtime.

7 And also I think we alluded to the fact  
8 that people are going to react negatively, at least  
9 those who perhaps are abusing it, they're going to  
10 react negatively, but sometimes that's what management  
11 has to do.

12 MR. SIMON: All right. Off the record  
13 for just a second.

14 (OFF THE RECORD)

15 MR. SIMON: I'll hand you, I guess,  
16 Exhibit 11, and just take a moment or two to  
17 look over that document, Mr. Kehr.

18 THE WITNESS: Okay.

19 BY MR. SIMON:

20 Q Have you seen this document before  
21 today?

22 A I don't recall actually seeing the  
23 document, no.

24 Q Do you know who the author is?

25 A No, I don't.

PAGE 196

196

1 believe it would be helpful if some senior Ford HR  
2 people were to visit to talk with our salaried  
3 employees.

4 I understand that's not your statement,  
5 but do you agree that that statement is true?

6 A Yeah. There was ongoing concern about  
7 communication and trying to weigh in on concerns and  
8 whatnot that were being expressed, yes.

9 Q You agree then that it was important  
10 that senior Ford HR people talk to the Ford salaried  
11 employees about these issues?

12 A I'm not sure if I understand the  
13 question.

14 Q In his statement it says I believe it  
15 would be helpful if some senior Ford HR people were to  
16 visit to talk with our salaried employees. Do you  
17 agree that it was helpful?

18 A Yes. Yeah. I think any Ford HR people  
19 that talk to the Ford salaried employees is generally  
20 helpful. Not always but often.

21 Q He further writes down below that  
22 Salaried employees remain suspicious about their  
23 futures. Now, I think you've indicated in your  
24 testimony there were a number of salaried employees  
25 that were suspicious about their futures at that time

PAGE 195

195

1 Q Do you recall any discussions with  
2 people at ZF Batavia or Ford regarding this document?

3 A Not regarding this document  
4 specifically but the -- all the elements of it, it  
5 seems to be extremely factual in terms of what the  
6 discussions that took place were and what the  
7 intentions were, yes.

8 Q Okay. Everything appear to be accurate  
9 in that Exhibit 11?

10 A Nothing jumps out at me as being  
11 anything other than factual.

12 Q All right. I'm going to skip that one.  
13 I'll hand you Exhibit 12, which is a two-page document.

14 A Okay.

15 Q All right. Now, you've not seen this  
16 document before, have you?

17 A That's correct.

18 Q All right. Would you agree that it's  
19 an e-mail exchange between Michael Warden, Mr. Hartmann  
20 and others in February of 1999?

21 A That's correct.

22 Q I was just wondering if you agree with  
23 some of the sentiments that are included in Mr.  
24 Warden's e-mail in the middle on that first page. It  
25 says Tim, now that the JV has been agreed on, I

PAGE 197

197

1 in '99, correct?

2 A Yeah. That's correct.

3 Q And would you agree with his next  
4 statement, They do not have a high trust level that  
5 any offers from the JV will be competitive with Ford  
6 compensation and benefits?

7 A Yeah. I think, as I indicated before,  
8 there was a range amongst the 160 salaried employees at  
9 the time that certainly there were some who were more  
10 skeptical and maybe used terms like suspicious and not  
11 trustworthy or not trusting. I'm sure there was a  
12 group of employees in that category. I don't know how  
13 large it was, but there was clearly some that would use  
14 terminology like this.

15 Q All right. And turning to his third  
16 paragraph -- the third bullet point, rather, of Mr.  
17 Warden's e-mail, it says Salaried employees believe  
18 that they will not have any opportunities in the new ZF  
19 Batavia departments regardless of their qualifications  
20 or abilities...that for as long as they remain at  
21 Batavia they will be second-class citizens.

22 Were you aware of such sentiments among  
23 the salaried employees at that time?

24 A I would say a limited number, yes.

25 This says salaried employees. It doesn't quantify the

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 198

198

1 extent of the concerns. But yeah, I think some of them  
2 had that sentiment, yes.

3 Q All right. Did you think that  
4 presenting those Ford salaried employees the ZF Batavia  
5 summary which is Exhibit 2 -- do you think that  
6 presenting them that summary in '99 helped alleviate  
7 some of these concerns that were out there about what  
8 would happen with their employment at ZF Batavia?

9 A Well, yeah, given the date, that this  
10 was back in February of '99, what, three -- three  
11 months of hard work evolved into what I indicated  
12 previously I thought were very reasonable offers in  
13 terms of both base pay and benefits.

14 So, yeah, I would imagine that for many  
15 of these folks this would have alleviated much of their  
16 concern for those who had it. But, you know, despite  
17 that information, as I indicated, 30, 35 of them  
18 elected not even to receive offers, so I don't know if  
19 those would still believe this statement or not.

20 Q Did you or anyone else, to your  
21 knowledge, tell these Ford salaried people that they  
22 won't be treated like second-class citizens at ZF  
23 Batavia?

24 A To my knowledge, what we tried to  
25 communicate to the salaried workforce was that we

PAGE 199

199

1 wanted to bring as many as feasible to the new company  
2 to join in the opportunities going back to -- I think  
3 some of these other things had the more positive spin  
4 in terms of what we were hoping to achieve and what the  
5 expectations were. But I think we were trying to  
6 alleviate fears that, yeah, there are no -- there are  
7 no second-class citizens. I mean, everybody is looked  
8 as being equally valued.

9 Q I know you may not recall specific  
10 conversations, but you believe that statement you just  
11 made was in some way conveyed to the Ford salaried  
12 employees in 1999?

13 A Yes. To some degree or another, yes.

14 Q Is it true that today they are treated  
15 like second-class citizens?

16 A No, it's not true.

17 Q Has Dave Adams ever said that he wants  
18 to get the -- that there's a Ford taint in the plant?

19 A I think it goes back -- Dave Adams has  
20 made some comments I think have been probably  
21 misinterpreted. It goes back to my cultural issue and  
22 the under-performance of this facility for many, many,  
23 many years. And with the loss of the FN business, Ford  
24 basically came to the conclusion that whether it's in  
25 the water or for whatever reason this factory doesn't

PAGE 200

200

1 seem to be productive and was going to shut it down.  
2 And that just say culture, whether it be Ford -- and  
3 Ford has got some very good plants and Ford has some  
4 not so good plants. This happened to be one of Ford's  
5 most troubled plants and the culture was such that  
6 collectively they weren't getting a good result and  
7 that we needed to move away from the culture that was  
8 not successful and move it to a successful culture.

9 And I can't tell you what Dave Adams'  
10 deep thoughts were on it, but you can't take a factory  
11 and convert it with an all new workforce and expect to  
12 get some kind of a different result. So I'm not sure  
13 how people interpreted -- interpreted Dave Adams'  
14 comments, but by no means, in my judgment, did Dave  
15 Adams have anything against Ford employees. Because,  
16 in fact, I'm a Ford employee and there's many Ford  
17 employees in there that Dave Adams is extremely  
18 supportive of. And there's some Ford employees and  
19 some new hire salaried employees that management  
20 doesn't look with quite as high a regard. But it's not  
21 because they came Ford or they came from ZF or they  
22 came from the outside. People are all valued based  
23 upon their individual contributions.

24 Q What Ford employees is Dave Adams  
25 supportive of?

PAGE 201

201

1 A I think he's supportive of myself and  
2 Rick Williams and many of them. I mean, I guess if you  
3 asked Dave, to force rank, what he thought of all of  
4 his Ford transition employees, I'm sure there's a gamut  
5 to the extent he knows some better than others. But  
6 Dave Adams does, in my judgment, not have anything  
7 against Ford employees.

8 Q Has he ever used that phrase, Ford  
9 taint?

10 A Not in my presence.

11 Q Has anyone told you that he said that?

12 A I've heard statements that -- I've  
13 heard comments and whatnot that some of the statements  
14 that Dave Adams has made have been -- I can't remember  
15 the specifics of it, but the take-away from those who  
16 heard it was Dave Adams doesn't like Ford employees. I  
17 mean, I wouldn't say that's -- probably some people  
18 have that impression.

19 Q And do you know what comments he did  
20 make that drew them to that conclusion?

21 A No, I'm not aware of any.

22 Q I mean, you said that people told you  
23 about it. Do you remember what they told you he said?

24 MR. HUNTER: Objection. Hearsay.

25 MR. SIMON: Discovery.

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

3/18/03

PAGE 202

202

1 THE WITNESS: Not that I can recall.  
 2 BY MR. SIMON:  
 3 Q Did Dave Adams or you or anyone try to  
 4 address these concerns and perception that Dave Adams  
 5 didn't like Ford employees?  
 6 A I've heard Dave make issues and I have  
 7 -- you know, Dave, I'm a Ford employee. There's a lot  
 8 of good Ford employees around here. Maybe some of your  
 9 comments you're making are being misperceived. And  
 10 then Dave -- and we're all struggling, particularly  
 11 Dave -- struggling with why is this factory such an  
 12 under-performing facility. And then, well, you know,  
 13 it was the Ford culture. Well, gee, Ford has got some  
 14 good plants, so it isn't just a Ford thing. Well,  
 15 maybe it's an Appalachian region. So Dave actually  
 16 went and read some Appalachian -- well, then, you know,  
 17 I took him outside the factory. I said "Dave, let's go  
 18 meet some other businesspeople who operate in this area  
 19 and they have very good performing factories."  
 20 So I think we got to the point where  
 21 it's, for whatever reason, inside the four walls of the  
 22 plant. And we even brought in some outside people  
 23 that, exposed to the culture in Batavia, become equally  
 24 poisoned, for lack of a better word. And frankly in  
 25 the last two years I've seen cultural change that the

PAGE 203

203

1 majority of the workforce is, in fact, thinking  
 2 different, working better, expectations are better, and  
 3 it's coming out in our productivity and our quality and  
 4 we're turning a corner.  
 5 I mean, if you think about it there's  
 6 different reasons why factories shut down. Some of  
 7 them because the product is obsolete, okay, others  
 8 because for whatever reason they're not very productive  
 9 and they have to be shut down. And this happened to be  
 10 one of the factories in the bottom five percent that  
 11 for whatever reason all of the management people Ford  
 12 sent in could not move the needle and change the  
 13 circumstance. And the joint venture came in, was faced  
 14 with this predicament and what are we going to do, and  
 15 we've worked hard at it now for four years and we've  
 16 made substantive improvements across the factory in  
 17 areas that Ford struggled with for 10, 20 years.  
 18 Q So Mr. Adams at some point questioned  
 19 whether it was the Ford culture which was hurting the  
 20 plant's performance?  
 21 A It was the culture of the factory and  
 22 because Ford ran the factory, it was the Ford culture.  
 23 Q But that's what he identified it as,  
 24 the Ford culture; is that fair?  
 25 A I -- I don't know how he characterized

PAGE 204

204

1 it in terms of the Ford culture. It was the culture of  
 2 the factory. And Dave knows that Ford has other good  
 3 factories so, therefore, it isn't a Ford thing,  
 4 otherwise Ford would be bankrupt if all of its  
 5 factories ran like Batavia ran.  
 6 Q And he also, I guess, questioned  
 7 whether it might be the Appalachian influence on the  
 8 workforce?  
 9 A Well, he was wondering -- you know,  
 10 thinking well, what is it about this place that isn't  
 11 where it needs to be.  
 12 Q And that's one thing that he  
 13 identified?  
 14 A Yeah. He was looking into some of  
 15 those. Because when you're trying to deal with a  
 16 culture, you need to understand the culture. And, you  
 17 know, culture is often a very geographic-type-oriented  
 18 circumstance. So he and I -- to answer your question,  
 19 I specifically took Dave out and tried and encouraged  
 20 him to characterize the circumstance better, that it is  
 21 unique to the four walls of the factory. It's not a  
 22 Ford thing.  
 23 So in answer to your question, yes,  
 24 people did consciously, you know, try and help each  
 25 other, you know, not just Dave but myself and other

PAGE 205

205

1 senior management people. What do we need to do to  
 2 move the needle here and protect not only our jobs in  
 3 the future but the workforce at large?  
 4 Some of it frankly goes back to the  
 5 overtime and some of the expectations of the employees  
 6 in terms of entitlements. There seemed to be an  
 7 entitlement attitude that, you know, we've tried to  
 8 work on and some of that you see in part of this  
 9 litigation.  
 10 Q You think that the plaintiffs in this  
 11 lawsuit suffer from an unjustified sense of  
 12 entitlement?  
 13 A I don't know. That's outside of my  
 14 area.  
 15 Q Well, you were saying certain employees  
 16 might suffer from a sense of entitlement; is that what  
 17 you said?  
 18 A I think the factory at large were  
 19 lining their pockets with extensive overtime, not being  
 20 very productive, and it was, some people would argue, a  
 21 country club environment, that status quo was fine and  
 22 we weren't going to really seriously move the needle  
 23 and become competitive long term. I mean, as evidenced  
 24 by the loss of the FN business and other.  
 25 Q Did you or Dave Adams ever suggest that

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)



3/18/03

PAGE 206

206

1 ZF Batavia should remove the Ford transitional  
2 employees out of their positions and replace them with  
3 ZF new hires to try to change the culture?

4 A There was never any discussion about  
5 blocks of employees as you just described it.  
6 Individuals, whether they be Ford transition or ZF  
7 employees who came to the joint venture or new hires  
8 outside, yeah, there was decisions talked about with  
9 people. Are they in the right job? Would they be able  
10 to contribute better elsewhere? But never as a -- as a  
11 class, as you're questioning me.

12 Q I mean, no one has ever said, to your  
13 knowledge, including Dave Adams, that the fact that  
14 somebody is from Ford is a negative in looking at their  
15 performance at the plant today?

16 A No. I don't believe Dave Adams has  
17 anything against Ford employees in general, no.

18 Q In fact, when you hired these  
19 transitional employees in '99, ZF Batavia did so  
20 because it was important to continue the production at  
21 the plant to have these employees; is that fair?

22 A Yeah. It continues to be important.  
23 They're, generally speaking, contributors to the  
24 organization.

25 Q Is it fair to say that there was a --

PAGE 207

207

1 in '99, looking ahead, you were concerned about the  
2 two- to three-year period of transitioning the plant  
3 from primarily the CD4E transmission to transitioning  
4 to the CVT?

5 A As it related to the salaried  
6 workforce?

7 Q Were you concerned that you had a  
8 salaried workforce that could help you in that  
9 transition from CD4E transmission to the CVT  
10 transmission?

11 A Well, yeah. But in this time frame the  
12 CVT transmission I don't think was scheduled to begin  
13 production for probably three years away. So it was  
14 primarily focused on continuing the day-to-day, month-  
15 to-month CD4E operations, knowing that we needed to  
16 hire substantial new complete organizations in terms of  
17 purchasing and some of those other things I mentioned  
18 to you. And, yeah, the expectation is that we would  
19 put together the management team, salaried workforce  
20 that would sustain us not just for the current  
21 production but into the future.

22 Q Well, is it fair to say that you  
23 understood that the Ford transitional employees would  
24 be less valuable once the CVT transmission production  
25 kicked in?

PAGE 208

208

1 A No, I wouldn't say that's true at all.

2 Q Has ZF management used the Ford  
3 transitional employees to groom other ZF new hires in  
4 the production of the CD4E or the CVT?

5 A I don't know what you mean by groom,  
6 but if -- yeah, if you have experienced people, whether  
7 they're Ford or ZF who came to the factory, and you're  
8 going to be hiring in new people, whether they be  
9 hourly or salaried, that, yeah, people need to be  
10 taught and trained and educated to perform adequately  
11 and it's gone both ways. Frankly some of the Ford  
12 transition employees have been taught the ZF way and  
13 Ford's -- you know, so you've got two cultures coming  
14 together so, you know, there's a fair amount of  
15 exchange of information, knowledge to the good of the  
16 organization.

17 Q Although you said it goes both ways,  
18 would you agree with me that primarily it has been the  
19 Ford transitional employees who have helped train the  
20 ZF Batavia employees regarding the mass production of  
21 transmissions?

22 A Yeah, I guess you could say that  
23 because most of the operations people were by  
24 definition Ford transition people during the metering  
25 process and all, then new people were brought in. Some

PAGE 209

209

1 of them had a fair amount of experience, some had less.  
2 Some in transmissions, probably most not in  
3 transmissions, but maybe they made tractors or some  
4 other type stuff. And they would have to be taught,  
5 you know, the ways of Batavia, if you will, in terms of  
6 the proprietary systems and processes and whatnot that  
7 occur in a factory. So I think as a matter of practice  
8 that's probably a true statement.

9 MR. SIMON: Let's do these together.  
10 I'm going to hand you Exhibit 13 and 14, which  
11 again are a series of e-mails. That's 13.

12 THE WITNESS: Who's got Exhibit 12?

13 MR. SIMON: This is 14. I've just  
14 given you Exhibit 13 and 14 together, Mr. Kehr,  
15 because they're e-mails that are -- two of the  
16 e-mails are just a day apart in March '99, but  
17 I just have some questions about each of them.  
18 You can familiarize yourself with them. I  
19 won't be asking if you agree with everything in  
20 them, just certain things.

21 THE WITNESS: Okay.

22 BY MR. SIMON:

23 Q All right. Exhibit 13 and 14 are, I'll  
24 just represent, Mr. Kehr, e-mail exchanges mostly by  
25 Mr. Warden on March 2nd and March 3rd, 1999. And I

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)



3/18/03

PAGE 210

210

1 acknowledge that you're not the subject -- none of  
2 these e-mails were sent to you, but I just want to ask  
3 you about some of these in here.

4 Turning to Exhibit 13, if you see in  
5 the middle there where it says "Batavia salaried  
6 employees that wish to remain with Ford..." -- do you  
7 see that in that one?

8 A Mm-hmm.

9 Q It says that "Consequently, they are  
10 particularly sensitive to openings at Sharonville.  
11 Unless they are reassured that they will not be forced  
12 out of the plant in the near future, I would expect  
13 serious reactions to transfers to Sharonville from  
14 other locations, which could include legal action  
15 and/or union activity among eligible employees. This  
16 is particularly risky given the protections for  
17 unionized hourly and salaried employees not afforded to  
18 non-union salaried employees."

19 Were you aware of this -- well, backing  
20 up a second, would you agree with Mr. Warden's  
21 statement that these salaried employees needed to be  
22 reassured about not being forced out of the plant in  
23 the near future?

24 A I would say selected salaried employees  
25 were probably concerned about what would be the

PAGE 211

211

1 transition window and whether they would be able to go  
2 to Sharonville or not, so yeah, there were concerns  
3 around what was going to occur -- occur in the future.

4 Q When you say select employees, I mean,  
5 I just kind of gathered from reading these e-mails from  
6 Mr. Warden -- and you can feel free to disagree-- is  
7 that there was significant apprehension and anxiety  
8 among the salaried workforce about what was going to  
9 happen with their employment at ZF Batavia; would you  
10 disagree?

11 A Well, I keep going back to characterize  
12 it that there was a range of concern and whatnot that  
13 started out probably more people than less at the early  
14 stages in the late '98, early '99 that I think over  
15 time was substantially alleviated. Yeah, I mean,  
16 people -- some people wanted to get out of Batavia as  
17 soon as absolutely possible.

18 Q But you would agree that these concerns  
19 were alleviated primarily because of the statements  
20 that ZF Batavia made at the May 27th, '99 meeting and  
21 the statements that are in the ZF Batavia summary which  
22 is Exhibit 2, that those verbal and written statements  
23 about what their terms and conditions of employment  
24 would be at ZF Batavia certainly alleviated the  
25 concerns; is that fair?

PAGE 212

212

1 A No. That --

2 MR. HUNTER: Objection. That is just  
3 way outside the scope of knowledge of Mr. Kehr  
4 to understand a group of, what, of 160 people  
5 believed or could have believed, and not to  
6 mention, it was a bit compound.

7 MR. SIMON: Well, that last part was  
8 fair. I'll re-ask the question.

9 BY MR. SIMON:

10 Q I mean, wasn't the May 27th, '99  
11 meeting and the fact that the package of compensation  
12 including salary and benefits that is in Exhibit 2,  
13 wasn't that all put together -- from your perspective  
14 as the CFO for ZF Batavia, wasn't that all put together  
15 to alleviate these serious concerns that the Ford  
16 salaried employees had about going to ZF Batavia?

17 A I guess I wouldn't agree with that  
18 statement. There was things occurring in parallel.  
19 There were those who -- those Ford salaried employees  
20 who were not going to join the joint venture for  
21 whatever their reasons, okay? So the May 27th meeting  
22 to them was a non-event, probably didn't even show up.  
23 So they were off on their own avenue, and I suspect  
24 those are the ones in this time frame that were making  
25 most of the noise. "I don't even want to hear from the

PAGE 213

213

1 joint venture. Just get me out of here as fast as  
2 possible." Okay? Then there were the other employees,  
3 probably, you know, the old 80 -- or the old 20 -- you  
4 know, 20, 50, 30 scenario where some employees are like  
5 "Well, okay, things aren't so bad. I'll hang in here  
6 and we'll see what happens," okay? And then there's  
7 the other employees who -- like myself and some others  
8 who had all the confidence that we would be able to  
9 work through the employment offers for those who were  
10 going to accept and we would make that a fair and  
11 equitable deal. And then for those who -- in that  
12 large group that were willing to entertain, continue to  
13 work hard in the company and see its success, some of  
14 those were going to join the new company and some  
15 weren't. And we worked hard to get a transition plan  
16 in place to deal with those who weren't going to join  
17 the company.

18 And that's what most of these e-mails  
19 are addressing are those who ultimately either didn't  
20 receive offers or didn't join the new company and were  
21 going to go back to Ford. That with dealt with over  
22 100 people fit into this category, who frankly may or  
23 may not have even attended the May meeting. That was  
24 specifically for the people who were interested in  
25 coming to the new company, wanted to understand it

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 214

214

1 better. You know, "What do you guys -- you know, what  
2 do you have to offer us? Show us an employment offer.  
3 Make me comfortable that, you know, this makes both  
4 economic and personal sense to me."

5 Q The last paragraph in Exhibit 13 says  
6 Given the unfortunate changes in direction that have  
7 occurred so far, it is important that plans are  
8 communicated to the Ford employees here by senior Ford  
9 management (preferably HR).

10 Let's take the second part of it. Do  
11 you agree that it was important that these plans were  
12 communicated to Ford employees by senior Ford  
13 management? Do you agree with that statement?

14 A Yeah. I would characterize, blanket  
15 statement, that, yeah, communications to employees are  
16 generally very positive and the right thing to do  
17 particularly in this uncertain environment when you've  
18 got a change in ownership of a facility with, you know,  
19 literally thousands of people.

20 Q What do you think Mr. Warren was  
21 referring to -- Mr. Warden, excuse me, was referring to  
22 when he said Given the unfortunate changes in  
23 direction that have occurred so far?

24 A I would imagine -- okay, I'm  
25 speculating a little bit, but there was the shift in

PAGE 215

215

1 thought that all of the Ford salaried employees could  
2 stay indefinitely to well, maybe only some of them, to  
3 none of them and we need a JV work force. I'm almost  
4 positive that that was what he's implying to there and  
5 probably the transition timing. At one time, you know,  
6 some people thought that there would be large -- you  
7 know, almost all the Ford employees would join the new  
8 company that said the transition then of those who  
9 didn't join could be executed in a year. And depending  
10 upon the numbers of employees, as it turns out, the  
11 transition time frame was extended a little bit because  
12 we had a good process in place and everybody was to be  
13 treated fairly, opportunities were made available for  
14 them and it was a success story that the board, you  
15 know, and both parents said, you know, this is working  
16 okay. There's no reason why we need to make something  
17 occur in 12 months. And I think that's why you saw  
18 maybe subsequently some of the information dealt more  
19 with two to three years.

20 Q Do you think the statement Employees  
21 have no confidence in Alain Claus, Dave Adams or me,  
22 Mike Warden -- do you think that was a fair statement?

23 A I have no idea.

24 Q Turning to Exhibit 14, I'll kind of  
25 take you in the middle here. Do you see where it says

PAGE 216

216

1 There also was a strong fear... in that first  
2 paragraph? And I'm reading from Mr. Warden's e-mail  
3 that looks like it was dated --

4 A The last sentence in that first  
5 paragraph?

6 Q Yeah.

7 A Okay.

8 Q And, again, this is Exhibit 14, an e-  
9 mail from Mr. Warden to Mr. Faistenhammer, right?

10 A That's what it appears to be, yes.

11 Q Mr. Warden writes There also was a  
12 strong fear that any offers given to employees here  
13 from the JV will result in significant loss of  
14 retirement benefits and/or salaries. And then it  
15 continues, We explained and (I believe) the employees  
16 accepted that this is not true, that if it were even  
17 attempted, no one would be likely to accept an offer  
18 from the JV. Do you agree with the sentiments that he  
19 indicated in those two sentences?

20 A Given the continuum of time and the  
21 communications that took place, as some of the other  
22 exhibits said, that, you know, there are going to be  
23 offers being made, you know, they are going to be  
24 competitive and, you know, be patient and let the  
25 organization get its act together and bring these

PAGE 217

217

1 offers forward. And since it is an optional  
2 acceptance, then I don't understand why any employee  
3 would disagree that says the employee -- if the offers  
4 aren't competitive to where I am today, then they're  
5 not going to attract any salaried employees to the  
6 venture and they're going to have a nightmare trying to  
7 maintain production. So, yeah, I would say it's, you  
8 know, accurate in that regard.

9 Q All right. So to avoid that nightmare  
10 in production in 1999 and 2000 you made sure that you  
11 offered a package to the Ford transitional employees  
12 that would be acceptable by a significant amount,  
13 right?

14 A Yeah.

15 Q All right.

16 A By reasonable people.

17 Q And are you saying that given that  
18 perspective, that you stood up there on the May 27th  
19 meeting and you explained this summary of benefits that  
20 was to be provided, that you specifically said that  
21 this is subject to change?

22 A Yeah.

23 Q And you don't recall any negative  
24 reaction among the attendees at that point?

25 A Not that I recall.

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 218

218

1 Q All right. Does it seem surprising  
2 that a group of people that may have been concerned  
3 about their future at this new company, ZF Batavia,  
4 that those people might be concerned to hear from the  
5 CFO that their compensation including salary and  
6 benefits was subject to change?

7 A I don't think it's any different than  
8 what they would have heard from any other employer.  
9 Ford Motor Company changed their policies and  
10 procedures in terms of co-pays and -- and whatnot,  
11 their vacation. I mean, one time they said you earned  
12 it in advance, then no, you earned it retroactively.  
13 And Ford does the same thing. So yeah, every month or  
14 every year you're curious to find out what's the latest  
15 adjustments and what's going to occur to the wage and  
16 benefit programs, what's the merit increases. Yeah.

17 So I would imagine that there might  
18 have been a little bit more uncertainty clearly around  
19 this one in terms of what it meant and just trying to  
20 understand the detail. But to me this is, you know,  
21 sort of business as usual when you're told that, you  
22 know, anything that you're getting in terms of wage and  
23 benefits are subject to change, or your employment, for  
24 that matter.

25 Q So you believe that it was reasonable,

PAGE 219

219

1 based on what you told the salaried employees in '99,  
2 that they should certainly expect that down the road ZF  
3 Batavia management is going to effectively disregard  
4 the summary when they're making changes regarding sick  
5 days, overtime, et cetera; is that fair?

6 A I think I disagree with about  
7 everything you said.

8 Q What do you disagree with?

9 A Why don't you -- see, sometimes you  
10 make questions and sometime you make statements, so I  
11 think you made a statement that I disagreed with. If  
12 you want to ask me a question, then I can answer a  
13 question.

14 Q You didn't tell the salaried employees  
15 at anytime in '99 that down the road ZF Batavia  
16 management is not going to consider statements in that  
17 written summary when it makes decisions about  
18 compensation and benefits, et cetera?

19 MR. HUNTER: Objection again. I think  
20 that's asked, answered. You asked that a  
21 couple of hours ago. You can ask it again.

22 BY MR. SIMON:

23 Q In terms of the verbal statements that  
24 you made at the May 1999 meeting or at any private  
25 meeting you made, you told them that -- you told the

PAGE 220

220

1 salaried employees that this package of benefits is  
2 subject to change, right?

3 A Subject -- I'm not sure if I used the  
4 term subject to change. Clearly in the written form  
5 that was handed out it says it's subject to change.  
6 And during the discussions, given the counsel that we  
7 had, we were to make sure that nobody assumes that this  
8 was a guarantee or promise or assurance, that any  
9 benefits programs are subject to change, modification  
10 into the future.

11 I can't remember exactly what the words  
12 were, but the appropriate, let's say, caveats were  
13 provided for.

14 Q And you don't recall any negative  
15 reaction when you made those appropriate caveats?

16 A I don't recall any.

17 Q Exhibit 15. And just in the way of  
18 saving time, I'm going to just refer you to a certain  
19 part of Exhibit 15, Mr. Kehr, so you don't have to read  
20 the whole thing.

21 Exhibit 15 is a series of e-mails in  
22 and around December 30th, 2000 -- excuse me, December  
23 and November of 2000 from various people. I'll just  
24 refer you to -- and if you have to read other parts of  
25 this to familiarize yourself with it for content,

PAGE 221

221

1 that's fine, Mr. Kehr. But this is an e-mail from  
2 looks like Marty Mulloy and -- sorry. It's to Marty  
3 Mulloy and Karen Horan and it's from Keith Kleinsmith,  
4 dated December 4th, 2000. It says that "Prior to  
5 meeting with the Ford Batavia people I wanted ZF  
6 management to meet with each person and confirm any  
7 commitments made to them on timing remaining with ZF  
8 Batavia. ZF had tried to shorten that time by one  
9 year, which represented a significant problem for those  
10 employees intending on retiring. ZF has agreed to  
11 honor the original commitments which will allow several  
12 people to work through to retirement." Do you know  
13 what Mr. Kleinsmith is referring to there?

14 A Yeah. There was -- as I mentioned  
15 before, when we said people needed to change over to  
16 the ZF Batavia payroll by December of '99, it was  
17 because, for instance, maybe somebody was going to  
18 accrue five years -- you know, five weeks of vacation  
19 based on seniority in October and it made sense to them  
20 for whatever reason to wait till the last minute.  
21 Other people, it didn't matter. So anytime you do  
22 these kinds of things, you want to set established  
23 dates. So people had to change payroll by the end of  
24 December and that was a line in the sand.

25 And then we had numbers of employees

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 222

222

1 who were, you know, 28, 29 years seniority. They  
 2 didn't want to join the new company and we all kind of  
 3 collectively said well, why don't we, you know, allow  
 4 them to stay and work here and as long as they retire  
 5 or otherwise take another assignment before the end of  
 6 2002, couldn't this be a reasonable, you know,  
 7 accommodation. We did the same thing for other  
 8 employees who weren't necessarily going to be  
 9 retirement-eligible. So this was accommodations made  
 10 as it related to the transition of the employees. And,  
 11 in fact, my IT manager was one of the employees  
 12 affected by this, that to disengage from the Ford IT  
 13 systems, it would have been really nice to have a good  
 14 Ford IT guy on site to help through that transition, so  
 15 Mike was put into this category. So that was what it  
 16 dealt with.

17 Q Okay. Exhibit 16. Have you seen  
 18 Exhibit 16 before, Mr. Kehr?

19 A Yes, I believe so. I think this was  
 20 posted.

21 Q All right. This is a notice sent out  
 22 to all salaried employees and contract employees and  
 23 it's from Len Sennish, the director of human resources,  
 24 right?

25 A That's correct.

PAGE 224

224

1 your first statement, ZF Batavia salaried employees,  
 2 Ford salaried, contract employees, all were required to  
 3 swipe in and swipe out for purposes of the foreign  
 4 trade zone. And we negotiated with the union and got  
 5 an agreement that they would swipe in. The Ford hourly  
 6 employees particularly were an issue. That they would  
 7 swipe in, but I do not believe we required them to  
 8 swipe out because I believe the way the gates operated  
 9 and whatnot, it was not practical or not possible. I  
 10 don't know all of the details, but I know -- I think  
 11 they do swipe in.

12 Q But the salaried employees swipe out?

13 A Yes.

14 Q I guess I don't understand. How is it  
 15 not practical for the hourly employees to swipe out,  
 16 but it is practical for the salaried employees to swipe  
 17 out?

18 A Well, I think it may be the way the --  
 19 the gates are set up. I mean, you're talking about  
 20 1000, over 1000 hourly employees, and, therefore, you  
 21 have a different fundamental exit and entrance, you  
 22 know, security guards with whatnot. I don't know -- I  
 23 don't know the specifics in terms of the mechanics as  
 24 to why necessarily the hourly employees couldn't swipe  
 25 out as well. It could very well be a union -- a union

PAGE 223

223

1 Q And if you can, how did the foreign  
 2 trade zone regulations result in a change in policy for  
 3 salaried employees at ZF Batavia?

4 A I'm not sure if it changed any policies  
 5 per se, but one of the requirements of the foreign  
 6 trade zone was to regulate access in and out of the  
 7 foreign trade zone real estate, if you will. And we  
 8 determined the most effective way to do that would be  
 9 to install and activate the badge readers and whatnot  
 10 so that we had a record for -- you know, it was  
 11 particularly a big issue with the Ford hourly  
 12 employees, that they had to card in that they were, in  
 13 fact, entering the facility so that we had the proper  
 14 documentation required. I mean, the other alternative  
 15 was a sign-in sheet or some other evidence. So this  
 16 was -- looked to be as the best means by which to  
 17 gather the required information related to the foreign  
 18 trade zone.

19 Q Now, salaried employees, pursuant to  
 20 this notice, were required to swipe the card when they  
 21 went in the plant as well as when they went out, right?

22 A That's what it says.

23 Q Now, were the hourly employees required  
 24 to swipe their cards when they went out?

25 A Well, it says that -- just to correct

PAGE 225

225

1 issue.

2 Under the foreign trade zone the  
 3 requirement is -- is to know who enters the zone, okay?  
 4 The time that people, you know, leave or whatnot, it's  
 5 not, I don't believe, a requirement of the foreign  
 6 trade zone. But if something should occur in a  
 7 facility, it would be nice to have as much information  
 8 as possible to see who was physically on the premises  
 9 at the time it occurred. Because this foreign trade  
 10 zone is a very serious thing and those who don't follow  
 11 the requirements are subject to severe penalties. So  
 12 more information is better.

13 Q And this notice reflects the current  
 14 policy at ZF Batavia for swiping in and swiping out?

15 A I don't know if it's a policy, if it's  
 16 a procedure or an operating pattern that, yeah, we  
 17 request salaried employees to badge in and badge out,  
 18 obviously while they're on the site.

19 Q It says in that third paragraph,  
 20 \_Please be advised that salaried timesheets will be  
 21 audited against Honeywell system readouts. Your  
 22 manager will asked to clarify notable differences  
 23 between them, and pay adjustments are a possibility if  
 24 no justification is forthcoming.\_

25 As you've explained the relationship

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)



PAGE 226

226

1 between the foreign trade zone regulations and this  
2 notice, why did ZF Batavia -- why does ZF Batavia have  
3 an audit of the swipes as compared to the salaried  
4 timesheets?

5 A Well, let's break it into its  
6 constituents here. You've got a foreign trade zone  
7 regulation that requires a certain action on  
8 management's part to meet the requirements. Okay?  
9 Then -- and I don't specifically know if this is the  
10 right time frame, but we have had and frankly continue  
11 to have some instances where you have what's called a  
12 get-and-go, where if they can get their parts in eight  
13 hours, then they get to leave and they get paid maybe  
14 up to 12 hours, which is a fundamental breakdown and  
15 can't be allowed to occur.

16 So we have on occasion said okay, well,  
17 what is another means to justify and look at whether  
18 hourly and salaried supervision are, in fact, in the  
19 factory doing what they're supposed to be doing and not  
20 running a get-and-go process. So we have used this  
21 data occasionally, as well as other information coming  
22 off the part counters, to look at what parts were  
23 produced, who is getting paid, including both hourly  
24 and salaried people, to basically ensure that the  
25 policies and the procedures and the pay scale and the

PAGE 227

227

1 wage and benefits programs are all being followed  
2 appropriately.

3 Q What does it mean by \_Pay adjustments  
4 are a possibility\_?

5 A Well, for instance, if we find out that  
6 there's a salaried supervisor who met his part counts  
7 and sent the guys over to the bowling alley and he was  
8 going to buy beers and he left the factory, but decided  
9 he was going to get paid for the full overtime of 12  
10 hours -- I mean, that's an extreme example of how this  
11 information would be compared to the timesheets to find  
12 misreporting of hours worked.

13 Q Well, wouldn't there be pay adjustments  
14 also if the salaried employee put on his timesheet that  
15 he worked eight hours when, in fact, the audit of the  
16 card showed that he only worked seven and a half hours?

17 A I don't know about that specifically.  
18 All I can tell you is that in this time frame we had  
19 the get-and-go circumstance and there was a conscious  
20 decision by management to look at this information as  
21 related to very serious offenses, Fair Labor Standard  
22 Acts, I mean, you name it. And, to my knowledge, it  
23 was not intended to look at half-hour discrepancies or  
24 any details like you're describing, for the purposes of  
25 docking a salaried person for half an hour. In fact,

PAGE 228

228

1 I'm not even sure if it's, you know, appropriate. And  
2 if it has occurred, it must be in a relatively limited  
3 numbers in my judgment, but I'm not that -- that close  
4 to it.

5 Q All right. You would agree that this  
6 -- these two sentences that we just read, they don't  
7 make any reference to overtime; would you agree with  
8 me? Where it says pay adjustments, do you see  
9 anything in there, in those two sentences, that  
10 reference that pay adjustments will be made regarding  
11 overtime?

12 A Well, it just talks about differences  
13 between the salaried timesheets and what the Honeywell  
14 readers indicate as the start and end of work. And pay  
15 adjustments could mean base or overtime I guess.

16 MR. SIMON: Okay. Let's go off the  
17 record.

(RECESS)

BY MR. SIMON:

20 Q We're back on the record, Mr. Kehr.  
21 I'm going to kind of jump around a little bit and  
22 actually go into some documents that, despite the size  
23 of that stack, I think we can get through quickly.

24 The CD4E transmission, is that made  
25 exclusively for Ford automobiles?

PAGE 229

229

1 A Ford and its affiliates, yes.

2 Q Okay. One of the big -- one of the  
3 main automobiles that it's used for is the Ford Escape?

4 A That's correct.

5 Q All right. Has Dave Adams ever said  
6 that the CD4E is just practice for the CVT?

7 A Yeah. I think I've seen that  
8 terminology used, yes.

9 Q Is that something that people at Ford  
10 agree with?

11 A Somebody -- well, I don't know what  
12 Ford's -- what Ford believes of it.

13 Q Have they ever told you their reaction  
14 to that kind of sentiment?

15 A No, I've never heard any reaction from  
16 Ford on that sentiment.

17 Q But Mr. Adams has said that CD4E is  
18 just practice for the CVT or words to that effect?

19 A I've seen written notes, you know,  
20 practice for the CVT, yes.

21 Q Okay. Have the Ford transitional  
22 employees been given fair opportunities to work on the  
23 CVT?

24 A Yes, to my knowledge.

25 Q Do you know how many Ford transitional

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)



PAGE 230

230

1 employees are currently part of the CVT transmission  
 2 production?  
 3 A We're not producing the transmission.  
 4 But no, I don't know.  
 5 Q Well, what do you call it? What stage  
 6 do you refer to it as?  
 7 A Well, we're beginning pre-production  
 8 builds, yes.  
 9 Q All right. If I told you that only two  
 10 Ford transitional employees were working on the CVT  
 11 transmission pre-production, would you be surprised?  
 12 A Salaried people?  
 13 Q Yes.  
 14 A I guess I'm not surprised. I think  
 15 there's only a total of seven.  
 16 Q There's only -- there's only seven  
 17 salaried employees working on the CVT pre-production?  
 18 A From the operations standpoint, to my  
 19 knowledge, yes. Now, there's, you know, installation  
 20 of equipment going on where there's salaried people  
 21 supervising the installation of the equipment and doing  
 22 some validation prove-outs. But I believe the budget  
 23 is seven or eight salaried heads for operations in the  
 24 CVT area.  
 25 Q What about this other related work that

PAGE 231

231

1 you referenced, how many other salaried employees are  
 2 involved in that?  
 3 A Oh, gosh, I don't know. I believe  
 4 there's at least one maintenance supervisor assigned  
 5 full time, but I don't know what the salary  
 6 infrastructure is around that.  
 7 Q Julie Hallere's replacement was Adam,  
 8 correct?  
 9 A Adam Vahratian.  
 10 Q And Julie was a ZF Batavia employee and  
 11 now she's back with Ford, right?  
 12 A That's my understanding, yes.  
 13 Q And Adam is also with Ford or with ZF  
 14 Batavia?  
 15 A I think I mentioned earlier, I believe  
 16 he is a Ford seconded employee.  
 17 Q Do you know why a ZF Batavia employee  
 18 was replaced by a Ford seconded employee?  
 19 A Well, I think that position is the CVT  
 20 program manager and it's not deemed to be a long term  
 21 salaried requirement, so that's one reason why it would  
 22 make sense to put in a non-permanent ZF Batavia  
 23 salaried person. And also, frankly I think the Ford  
 24 board members and management within Ford believes that  
 25 that position offers a good opportunity to train a Ford

PAGE 232

232

1 salaried person in, you know, the aspects of a stand-  
 2 alone business and it does have close ties back to the  
 3 Ford product development arena, so I think it's sort of  
 4 a natural fit for a Ford or ex-Ford employee to be in  
 5 that circumstance.  
 6 Q All right. Let me refer you to some  
 7 documents. We won't make these exhibits. It might  
 8 make things easier. This is a document that is Bates  
 9 stamped number 218. I believe that was produced by us,  
 10 the defendants. And it says at the top Critical plant  
 11 designation. Do you know, have you ever seen this  
 12 document before?  
 13 A Not to my knowledge.  
 14 Q Do you know what a critical plant  
 15 designation is?  
 16 A Yes, I do.  
 17 Q Well, what is that?  
 18 A I believe it's a -- a term related to  
 19 the hourly contract that there are stipulations about  
 20 how many, I guess, overtime hours or overtime shifts  
 21 you can schedule hourly employees unless you go to a  
 22 critical plant designation, to which you get some  
 23 relief. Apparently it's 90 days. And it's something  
 24 that you do if you're really hard pressed to meet your  
 25 assembly plant requirements in our case.

PAGE 233

233

1 Q And the plant was designated as  
 2 critical status in May of 2001?  
 3 A I believe that's correct, yes.  
 4 Q Was it taken off critical status 90  
 5 days after that?  
 6 A We're no longer on critical plant  
 7 status. I don't know when we came off of it.  
 8 Q Whose decision is that to take the  
 9 plant off critical status?  
 10 A To take it off and on I would say is  
 11 both operations, HR and probably somebody like Dave  
 12 Adams.  
 13 Q All right. Okay. That's all I had for  
 14 that one. We'll put that in a separate stack since we  
 15 won't make that an exhibit.  
 16 This document is marked EWW10774,  
 17 produced by Ford. And it says at the top Appendix  
 18 three, allocation of separation incentive costs Batavia  
 19 salaried employees. It has a little post-it note at  
 20 the bottom that says To Ed Thompson from Karl Kehr.  
 21 Have you ever seen this document before?  
 22 A Yes, I have.  
 23 Q If you could just generally explain  
 24 what this document is.  
 25 A Well, during the initial discussions,

PAGE 234

234

1 obviously when you negotiate a transaction of this  
2 magnitude, you try and provide some direction or  
3 clarification about how you would proceed if certain  
4 events occur, and there was some discussion that if for  
5 some reason there would be a separation incentive  
6 program instituted, that the joint venture would  
7 perhaps participate in sharing some of the costs. And  
8 there was -- quite frankly, this was referred to as the  
9 Tom Gorman schedule -- calculations as relates to how  
10 the sharing of those costs would take place between  
11 Ford and ZF. And frankly I don't think this was ever  
12 agreed to and certainly never implemented.

13 Q Okay. And who authored this document?

14 A I believe it was Tom Gorman.

15 Q Okay. And who is Tom Gorman?

16 A Tom Gorman was my boss at the time,  
17 when I was working at Ford in the mergers and  
18 acquisitions group.

19 Q Okay. This is a multi-page affair that  
20 was produced by Ford, EWW10636, and it says at the top  
21 \_7 week team, ZF/Ford Greater JV, it also says draft.  
22 Just for expedience sake I'm not going to ask you to  
23 review every one of these pages, Mr. Kehr, but if you  
24 could try and identify, if you know, what this set of  
25 documents concerns.

PAGE 235

235

1 Feel free to read all of the documents,  
2 Mr. Kehr. My only question of you is just to give me a  
3 general understanding to the extent you know about what  
4 these documents concern. And I'm not going to ask you  
5 to verify that because.

6 A Yeah, I guess I generally know what the  
7 concept and the flavor of these are. And it seems like  
8 there's two copies in here but okay.

9 Q Go ahead then, enlighten us as to what  
10 these are.

11 A Okay. This seems to deal with the time  
12 frame and maybe the discussion was taking place around,  
13 I think, what ultimately became ZF Transmission  
14 Technologies, LLC that I mentioned to you at the  
15 beginning of the discussions. There were some  
16 different scenarios looked about, you know, with the  
17 parents that frankly I participated in some of the  
18 discussions, but most of them were held at the parental  
19 level, as you can see by the documents. And I think it  
20 ultimately culminated in the creation of ZFTT.

21 Q Do you know who created these  
22 documents?

23 A Not specifically, no.

24 Q Is it Ford or ZF Batavia who created  
25 them?

PAGE 236

236

1 A I would say that these were created not  
2 at ZF Batavia. They were created by either Ford and/or  
3 ZF, clearly a combination.

4 Q I see.

5 A It looks to me like it's a ZF-prepared  
6 document. This P over here is probably the P division,  
7 so this would probably have been done by the  
8 Saarbrucken group. And the ZF logo. This was not, to  
9 my knowledge, prepared by Batavia.

10 Q Now turn to page 659, which is the  
11 second-to-last page there.

12 A Okay.

13 Q Do you see where it says board of  
14 directors and lists some names there?

15 A Yes.

16 Q I think you mentioned some of those  
17 names before for ZF. Given the names listed as the  
18 Ford directors, do you know what time period this was?

19 A Well, it was certainly beyond '99. I  
20 would imagine, based on the date of some of this other  
21 stuff, it would have been some time in, I guess, 2000,  
22 2001 even. I don't know.

23 Q These three individuals that are listed  
24 under Ford directors -- do you see the three names  
25 there under Ford?

PAGE 237

237

1 A Yes.

2 Q Were these the people who were there  
3 after Ford moved more senior people on the board of  
4 directors or are these the people that were on the  
5 board for Ford before that move occurred?

6 A Roman Krygier and Dave Szczupak clearly  
7 came in as part of the move to, let's say, upgrade the  
8 Ford board members. Roman is now a group vice  
9 president. Dave Szczupak is a vice president. Jim  
10 Donaldson retired perhaps last year. He may have been  
11 one of the earlier board members or maybe an interim  
12 step, but he was a board member with Jim Provit  
13 (phonetic). I don't think he was a board member in  
14 '99, but I could be mistaken.

15 Q How often does the board of directors  
16 meet?

17 A We were meeting four times a year. Now  
18 we meet three or four times a year, depending upon the  
19 availability and the requirements.

20 Q Since 1999 has the subject of the Ford  
21 transitional employees and their compensation and  
22 benefits -- including benefits been raised at any of  
23 those board meetings that you recall?

24 A No.

25 Q I'll hand these jointly to you, sir.

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 238

238

1 Again, we're not going to make an exhibit. There you  
2 are. For the record, I'm handing you a single document  
3 that's marked EWW10556 produced by Ford, as well as a  
4 set of documents produced by Ford, Bates stamped 685  
5 through 700. They both reference PTO. I'm just  
6 showing these to you jointly. Let's take them  
7 individually if we can. If you have to review the  
8 documents further to give testimony, that's fine.

9 But the document marked 556 that says  
10 PTO PVC 4/5 at the top, do you know what that document  
11 is?

12 A I have no idea. I haven't seen it. I  
13 don't -- I can't even glean from the content what it's  
14 even talking about.

15 Q We'll move on to the next one.

16 A Sorry.

17 Q This one I have a feeling you'll know  
18 more about. This is the set of documents beginning  
19 with number 685 that says "ZF Batavia PTO management  
20 discussion, February 11th, 2000" and continues through  
21 document number 700. What was this about?

22 A Let me take a look at it.

23 Q Sure. Take your time.

24 A Okay.

25 Q All right. After reviewing this set of

PAGE 239

239

1 documents, can you explain what these documents are and  
2 what perhaps this meeting on February 11th, 2000 was  
3 about?

4 A Yeah. I don't recall being in the  
5 meeting itself, but looking at the document, it deals  
6 with really, I think, two facets. One is the  
7 continuing productivity and meeting schedule issues  
8 that I've already talked to you about, so it looks like  
9 it's reporting that continued lack of good performance  
10 from the factory.

11 And then I think probably most  
12 importantly what this is dealing with is a re-balance  
13 in the window of balancing out the Contour/Mystique  
14 CD4E production and getting ready to launch the Ford  
15 Escape CD4E production and the need to, I guess,  
16 furlough, lay off or otherwise accommodate hourly  
17 employees in this valley preparing for the launch of  
18 the Escape. Retooling the Kansas City assembly plant  
19 was the driver, it appears, behind a lot of this.

20 Q All right. Well, since you don't  
21 remember being at the meeting, I won't be able to ask  
22 you who else was at the meeting that you don't  
23 remember. But notwithstanding that, who typically  
24 would attend this kind of meeting?

25 A I don't know. I would think that given

PAGE 240

240

1 this, it was probably something that Dave Adams may  
2 have participated in, perhaps Len Sennish because of  
3 the HR details, and possibly obviously power train  
4 management. There must have been some people from  
5 Ford's power train operations management. That's what  
6 PTO is. It may have included a combination of  
7 operating types, as well as some labor relations folks.  
8 But that's really only a guess based upon the content  
9 of the package.

10 Q All right. This document I'm afraid I  
11 only have a couple copies of, but this is documents  
12 that we produced by fax yesterday and hard copies were  
13 given to counsel this morning. It concerns employment  
14 of Rick Ervin, which is one of the three new plaintiffs  
15 added to the lawsuit, so that's why this production was  
16 made supplementally by the plaintiffs. It's marked  
17 numbers 262 through 266 and it involves an e-mail  
18 exchange with Mr. Ervin and Mr. Kehr and others in  
19 January of 2003.

20 Generally, Mr. Kehr, were you aware of  
21 Mr. Ervin's inquiry into whether he could obtain  
22 retirement benefits from Ford and still retain his  
23 employment at ZF Batavia?

24 A Well, I'm aware of the issue that was  
25 brought to my attention by Len Sennish on January 13th,

PAGE 241

241

1 so I read the subsequent e-mails at the time and  
2 determined that Bonnie Gorichan, who is the Ford labor-  
3 type attorney, would be the best person to, you know,  
4 opine on this matter, so I left her a voice mail, said  
5 I was going to send her an e-mail chain and would  
6 appreciate getting back to me, which she subsequently  
7 did.

8 Q Ms. Gorichan, whose name appears on the  
9 first page of this document, number 262, she's an  
10 attorney with Ford?

11 A That's correct.

12 Q And where does she -- where does she  
13 work?

14 A Well, she works in Dearborn somewhere  
15 and she's a labor expert inside of Ford. In fact,  
16 Bonnie has, you know, worked with us since the  
17 beginning of the joint venture. She helped review that  
18 tri-fold document, Exhibit 2, I believe, at the time,  
19 so she was extremely familiar with what the intentions  
20 were and the wording and whatnot around this Ford  
21 transition retirement benefits, so I thought she was  
22 the best person to address this.

23 Q All right.

24 A I also forwarded this to Lee Mezza when  
25 I heard back from Bonnie, and asked Lee Mezza to let me

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

3/18/03

PAGE 242

242

1 know if he disagreed with Bonnie's assessment because,  
2 notwithstanding those present, you can't always take  
3 the attorney's response at face value, so I went to a  
4 businessman.

5 Q Did he give you a different opinion?

6 A No. He didn't respond back. I told  
7 him only to get back to me if he disagreed, so I think  
8 he agreed.

9 Q All right. So the position as set  
10 forth by Ms. Gorichan hasn't changed since then  
11 regarding Mr. Ervin's retirement?

12 A Not to my knowledge. And frankly I  
13 think ZF -- well, I know ZF Batavia, I personally  
14 support her recommendation as being consistent with the  
15 intentions of what we were offering, so it wasn't like  
16 I disagreed with her and wanted to take this on at any  
17 kind of a higher level. She basically reconfirmed what  
18 I thought the answer would be. But as you can see by  
19 my e-mail, I did not lead her by any means as to what I  
20 thought the outcome should have been. In fact, if she  
21 would have come back and said, oh, no, let's go ahead  
22 and do that, I would have been elated that we could  
23 have made this available to some of these Ford  
24 transition employees.

25 I did request that Lee Mezza go back to

PAGE 243

243

1 the NESC desk, though, and clarify that those people --  
2 when it comes to the Ford transition employees, because  
3 of the uniqueness of this language around the grow-in  
4 provisions and whatnot, that there be a flag put in  
5 there that says these types of questions from these  
6 types of employees should be elevated to the  
7 appropriate people who are familiar with the underlying  
8 programs because this is a quite -- quite unique  
9 structure within Ford.

10 Q I'm not going to make this an exhibit  
11 either. This is a document that says at the top  
12 "Batavia salaried employee retirement transition  
13 agreement" that was produced by Ford, Bates stamp  
14 number EWW1504 through 514.

15 A I'm familiar with this. In fact, I  
16 signed it.

17 Q All right. Are the last several --  
18 let's see here. Turning your attention to 510, do you  
19 see your signature?

20 A Yes.

21 Q And then is 511 indeed -- is that an  
22 exhibit to this agreement, if you know?

23 A I think 511 to 514, at least --

24 Q Thirteen is missing.

25 A I -- I don't know if this was attached

PAGE 244

244

1 to it or not. I mean, I'd have to read the document to  
2 find out if this is an attachment. But I think some of  
3 these things were part of the joint venture agreements  
4 or the secondment agreements as part of the joint  
5 venture transaction that possibly could have been  
6 attached as reference to this particular agreement.

7 Q Putting aside the issue of whether the  
8 exhibits are attached then, I guess numbers 504 through  
9 510, which is the page with your signature, is it your  
10 understanding that this is the current agreement that  
11 governs the retirement benefits for Batavia salaried  
12 transition employees?

13 A Yeah. I think this document required  
14 that Ford go make sure this stuff happened, like the  
15 amendments to the general retirement plan was going to  
16 be modified. And this was my assurance that those  
17 retirement-related benefits that affected the Ford  
18 transition employees, in fact, did occur and didn't get  
19 lost somehow in the Ford system, so we put this  
20 document together. Does that answer your question? To  
21 my knowledge, it has not been modified.

22 Q All right. Just to prove that I like  
23 to do things backwards, let me show you the joint  
24 venture agreement.

25 A These I think I've memorized.

PAGE 245

245

1 Q I'm not going to make this an exhibit.  
2 It's not necessary to do so. But it's marked --  
3 produced by Ford, Bates stamped EWW1380 through 415.  
4 I'm also handing you the amended and restated joint  
5 venture agreement that's marked Bates stamp 472 through  
6 501 -- pardon me, that's 472 through 503 is the amended  
7 and restated joint venture agreement.

8 Now, the joint venture agreement was  
9 entered into January 1st, 1999, correct, Mr. Kehr?

10 A That's correct.

11 Q And then the amended and restated joint  
12 venture agreement -- it says it right on the agreement  
13 -- was entered into April 12th, 2001.

14 A That's correct.

15 Q And is it my understanding that the  
16 purpose of the amended and restated joint venture  
17 agreement was for the purpose of creating ZF  
18 Transmission Technologies?

19 A I believe that was the primary purpose  
20 of this document. I believe we also cleaned up, if you  
21 will, or made clarifying changes to some of the  
22 language that was in the original joint venture  
23 agreement. But the primary purpose was to create ZFTT.

24 Q I might point out that one difference  
25 is -- if you look at paragraph 7.1 of the original

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

PAGE 246

246

1 agreement, which is Article VII, employee relations,  
2 would you agree with me that the employee relations  
3 section that's in the first joint venture is not in the  
4 amended and restated joint venture agreement?

5 And I'm not trying to trick you, Mr.  
6 Kehr. The document is what it is but --

7 A I don't know.

8 Q Okay. All right. Focusing then on  
9 paragraph 7.1 of the original joint venture -- do you  
10 have that in front of you?

11 A Mm-hmm.

12 Q It provides that "Salary employees of  
13 Ford who are presently assigned to the Batavia facility  
14 will be provided to the Company..." which is ZF Batavia  
15 "...by Ford in accordance with employee secondment  
16 agreements." Indeed is that what occurred?

17 A Yes.

18 Q And would you agree that it was  
19 important, an integral part of the joint venture, that  
20 Ford provide these salaried and hourly employees to ZF  
21 Batavia?

22 A Yes. And under what terms they'd be  
23 compensated, yeah. I mean, that was what that was  
24 mostly about.

25 Q Paragraph 7.3.1, I'm just going to pick

PAGE 247

247

1 it up in the second sentence of 7.3.1. "Subsequent to  
2 the Company's employment offers, but no sooner than one  
3 (1) year after the closing date, Ford will accept from  
4 the Company..." -- and I'll stop for a second. The  
5 company, would you agree with me, is identified as ZF  
6 Batavia, LLC?

7 A I agree.

8 Q Okay. It goes on to say that "...Ford  
9 will accept from the Company, within a commercially  
10 reasonable period of time and consistent with the  
11 ongoing needs of the Company, all Ford salaried  
12 employees not receiving offers of employment from the  
13 Company." Did Ford meet that obligation, to your  
14 knowledge?

15 A Well, I'm sure it met the spirit of the  
16 agreement. I -- I don't know if -- no sooner than one  
17 year after, I don't know. But I'd say reasonably  
18 commercial terms were established and met at the two to  
19 three years and, to my knowledge, all the Ford salaried  
20 employees have been dispositioned by one means or  
21 another.

22 Q Did they all accept -- those employees,  
23 did they all continue their employment with Ford or did  
24 some of them experience a separation of employment?

25 A Well, there was over 100 of them. I

PAGE 248

248

1 believe the majority of them were reassigned, some  
2 retired during the course, some retired and then joined  
3 Batavia. And I think, to my knowledge, there were no  
4 separations, but there might have been a couple of the  
5 Ford salaried employees near the back end that frankly  
6 just couldn't seem to be placed, so I don't know. But  
7 if there were any, I think you asked me about  
8 separations, it was extremely limited numbers and I'm  
9 not aware, in fact, even if there were any.

10 Q Okay. 7.3.3, I'll just read it for  
11 you. "As job openings occur within the Company..."  
12 which is ZF Batavia "...for both salary and hourly  
13 positions, the Company shall hire its own workforce  
14 with the ultimate goal of having all positions filled  
15 by employees of the Company." Has that taken place?

16 A Yeah, I would say in, you know, 99.9  
17 percent of the instances as we have openings occur, we  
18 hire either ZF Batavia salaried employees or ZF Batavia  
19 hourly employees. And in rare instances we might have  
20 a parent, for instance, Adam Vahratian, come in and  
21 fill a particular salaried position, but that's by far  
22 the exception.

23 Q 7.4.3, it says "The Parties shall use  
24 good-faith efforts to facilitate the timely transition  
25 of the Company's workforce to the Company's payroll to

PAGE 249

249

1 achieve the labor cost structure contained in the  
2 initial Business Plan." Has that happened?

3 A Yes. Extremely good-faith effort.

4 Q Have you achieved the labor cost  
5 structure contained in the initial business plan?

6 A From the salaried standpoint, yes.

7 Q And when was this business plan  
8 created?

9 A It was created during the negotiations  
10 between Ford and ZF back in 1998.

11 Q To your knowledge, has a copy of that  
12 been retained?

13 A Oh, yeah. Yeah, the original business  
14 plan is available.

15 Q Is it updated?

16 A No. Well, the business plan is  
17 prepared more often than I care for, but the original  
18 business plan is clearly, you know, understood by all  
19 the parties. When you say original business plan,  
20 that's what, you know, this would have been referring  
21 to when it says in the initial business plan.

22 Q And when you talk about the other  
23 business plans that you prepare often, is that done on  
24 an annual basis or --

25 A Yeah. We have an annual business

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)



PAGE 250

250

1 planning process, but given the nature of the joint  
2 venture and whatnot, we often prepare more than one  
3 business plan a year. Unfortunately sometimes it's as  
4 high as 20.

5 Q As high as 20 business plans?

6 A Twenty business plans, different cuts,  
7 different looks, depending upon all this stuff. We  
8 don't need to go there.

9 Q Okay. Paragraph 10.1, it says Article  
10 X, Management. 10.1 says "The Company shall be managed  
11 and operated consisted with the business objectives  
12 outlined in Article III and its Business Plan, and in  
13 accordance with its Articles of Organization and  
14 Operating Agreement." Does the company retain a copy  
15 of the operating agreement?

16 A Yes.

17 Q Is that updated from year to year?

18 A Well, as I understand the legalisms of  
19 an LLC, the operating agreement is something that's  
20 required and it defines, I think, some management  
21 responsibilities, authorities, but predominantly with  
22 an LLC the operating agreement has less substance to it  
23 and it's really the joint venture agreements that are  
24 most important. But I do occasionally refer to the  
25 operating agreement and read certain sections as

PAGE 251

251

1 relates to my job.

2 Q 10.2 there refers to the board of  
3 directors. It refers to the president of the company  
4 as being a director. Is that currently the case?

5 A No. I think, as I mentioned earlier  
6 today, there was -- I think Dave Adams was shown as a  
7 non-voting member of the board, being the seventh  
8 director, and then I think in this latest agreement  
9 that no longer is the case. I think it's Glenn Warren  
10 and Gerhard Wagner, so that's what I alluded to  
11 previously.

12 Q Are there any significant decisions  
13 made in the plant that don't get Ford's approval?

14 A Oh, many, most, almost all. If you go  
15 to these agreements and the operating, there's a great  
16 deal of delegated authority to the joint venture  
17 management team, that, yeah, we're responsible for  
18 running the business and we report to the board. And  
19 there are some things that the board needs to approve,  
20 like charitable contributions and a few other things.  
21 And as long as we're operating in the normal course of  
22 business, operating management has the authority to do  
23 what it needs -- needs to do. Obviously if we're going  
24 to go buy vacant land someplace, that would be a board  
25 required. So there's -- there's a list of things that

PAGE 252

252

1 the board has to approve and then also what the members  
2 have to approve. But it was structured for Batavia to  
3 be a stand-alone company with the authority to execute  
4 the business as it sees fit.

5 Q When you referred to the things that  
6 the board has to approve or the members have to  
7 approve, what documents set forth those --

8 A I'm surprised --

9 Q -- understandings?

10 A I'm sorry. Were you done?

11 Q Yes.

12 A I'm surprised it's not in here. If  
13 it's not in here, it must be in the operating  
14 agreement.

15 Q Your attorney is nodding, so --

16 MR. HUNTER: I'm just trying to be  
17 helpful. Sorry.

18 MR. SIMON: Yes, that's fine. That's  
19 quite all right.

20 BY MR. SIMON:

21 Q Do you know of a Mr. McDonald who was  
22 ever on the board of directors?

23 A Mac MacDonald?

24 Q I don't know his first name.

25 A Well, there was a Mr. MacDonald that

PAGE 253

253

1 was the Ford treasurer, still is the Ford treasurer,  
2 that was never -- to my knowledge, no, he was not a  
3 board member.

4 Q He still is the Ford treasurer?

5 A Yes. Well, he was at the time of the  
6 joint venture. In fact, he was sort of a second-level  
7 boss to me when I was in the mergers and acquisitions  
8 group and then he went off and did some other stuff and  
9 then he's actually come back into that same position,  
10 if it's the same Mr. MacDonald.

11 Q His first name is Mac?

12 A Is it spelled M-A-C?

13 Q I don't know.

14 A Oh, okay.

15 Q Did you say his first name -- I think I  
16 misunderstood you.

17 A Well, you said Mr. MacDonald. The only  
18 one I'm aware of that had anything to do with this,  
19 McDonald, is Mac MacDonald who is the Ford treasurer,  
20 but I'm -- I don't know.

21 Q What did he have to do with the joint  
22 venture, if anything?

23 A Well, Tom Gorman, my boss, worked for  
24 Mac MacDonald, co-reported to him and I believe it may  
25 have been Jim Donaldson, the business strategy office,

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)

EVERETT W. WHISMAN, et al. vs. ZF BATAVIA, LLC, et al.

KARL S. KEHR

3/18/03

PAGE 254

254

1 and Mac's role would be -- would have been the  
2 fiduciary responsibility around looking at the  
3 valuations of the contributed assets, the structure of  
4 the business, all the things that, you know, treasurers  
5 do is what his role was in this. I had numerous  
6 meetings with Mac in -- in structuring the -- the joint  
7 venture. But in terms of setting it up operationally  
8 and any involvement since the beginning, it's been  
9 essentially nil.

10 Q Do you know of any Mr. McDonald at Ford  
11 who has responsibility in connection with hourly  
12 employees at ZF Batavia?

13 A No, not that I'm aware of.

14 Q Is there a Jim Donaldson that works at  
15 Ford?

16 A Jim Donaldson is retired now, but he  
17 was shown on some of the other documents. I'm not sure  
18 if they're exhibits or not, but I did see Jim  
19 Donaldson's name on there. And, yeah, he was a board  
20 member for a period of time. I believe he was also a  
21 vice president.

22 Q Vice president at Ford?

23 A For Ford, yeah.

24 Q Did he have responsibilities in  
25 connection with the labor force at ZF Batavia?

PAGE 255

255

1 A No, not that I'm aware of. When you  
2 say the labor force, are you talking about hourly or  
3 salaried?

4 Q Either one.

5 A When you say labor, I always think  
6 hourly. Jim wouldn't have any involvement on the  
7 hourly side. I do recall having a meeting with Jim  
8 Donaldson prior to a board meeting where we got these  
9 benefit programs approved. And Jim had asked me to  
10 come up and bring him up to speed, I think, with the  
11 joint venture. And I went through with him the wage  
12 and benefit programs and whatnot, not just for the  
13 transition employees but at large. And he asked me  
14 questions about, you know, are we getting everything  
15 set up and da, da, da, da. And I thought the review  
16 went very well and didn't hear or have any other  
17 meetings with him specifically as it dealt with wage  
18 and benefit programs.

19 Q All right. The amended and restated  
20 joint venture agreement refers to an alternate dispute  
21 resolution provision, which is not unusual in this type  
22 of agreement. Have you ever exercised that provision  
23 in any dispute between Ford and ZF Batavia?

24 A No, not that I'm aware of.

25 MR. SIMON: I think I'm done. Off the

PAGE 256

256

1 record for a second.

2 (OFF THE RECORD)

3 MR. SIMON: Back on the record. I have  
4 no further questions. Thank you, Mr. Kehr.

5 THE WITNESS: Thank you.

- 0 -

(AND FURTHER THE DEPONENT SAITH NAUGHT)

- 0 -

Karl S. Kehr

PAGE 257

257

C-E-R-T-I-F-I-C-A-T-I-O-N

STATE OF OHIO,

COUNTY OF HAMILTON, To-wit;

I, Susan K. Lee, CVR-CM, Court Reporter  
and Notary Public in and for the State of Ohio, do  
hereby certify;

That on the 18th day of March, 2003,  
there appeared before me pursuant to Notice and  
agreement of counsel, KARL S. KEHR, as a witness in the  
previously entitled cause;

That the said witness was sworn by me  
and examined to tell the truth, the whole truth, and  
nothing but the truth in said cause;

That the deposition was taken by me via  
Stenomask and electronic recording and the foregoing  
256 pages contain a true, full and correct  
transcription of all the testimony of said witness;

That the deposition was submitted to  
counsel for the witness for reading and signature;

That I am not related to or in any way  
associated with any of the parties to said cause of  
action, or their counsel, and that I am not interested  
in the event thereof.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 19th day of April, 2003.

Susan K. Lee, CVR-CM  
My commission expires:  
August 30, 2004

RIVERSIDE REPORTING

(859)291-6110(KY) -- (513)574-7017(OH)